PRACTICAL NOTES

ON THE

MANAGEMENT OF ELECTIONS

BEING

THREE LECTURES ON PARLIAMENTARY ELECTION LAW AND PRACTICE, GIVEN AT THE LONDON SCHOOL OF ECONOMICS AND POLITICAL SCIENCE (UNIVERSITY OF LONDON)

BY

ELLIS T. POWELL, LL.B. (LOND.), B.SC. (ECON. LOND.);

Fellow of the Royal Historical Society; Fellow of the Royal Economic Society; of the Inner Temple, Barrister-at-Law; Author of the "Essentials of Self-Government"

LONDON:
P. S. KING & SON,
ORCHARD HOUSE, WESTMINSTER.
1910.

PRICE 1/6 NET.

STUDIES IN ECONOMICS AND POLITICAL SCIENCE

EDITED BY THE HON. W. PEMBER REEVES
DIRECTOR OF THE LONDON SCHOOL OF ECONOMICS

No. 17 in the series of Monographs by writers connected with the London School of Economics and Political Science

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(ENGLAND AND WALES).

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PRACTICAL NOTES ON THE MANAGEMENT OF ELECTIONS.

The modern statutes which are of special application to election work in this country begin with the Parliamentary Election Act of 1853, which limits the time for proceeding to election in certain constituencies. The statutes of first importance are, however, 17 and 18 Vict., c. 102, which consolidates and amends the law relating to bribery, treating, and undue influence; the Representation of the People Act, 1867 (which, incidentally, provides for the representation of the University of London); the Parliamentary Elections Act, 1868, which is the main authority for the law relating to election petitions; the supremely important Ballot Act (1872); and the Corrupt and Illegal Practices Prevention Act, 1883, which is practically a codification of the law on the subject. This Act is an almost contemporary enunciation of the legal principles applicable to elections. It is an Act with which every election agent and every active and responsible political worker, whether official or unofficial, ought to be thoroughly acquainted. The Registration Act and the Redistribution Act, both of 1885, are concerned with elements of the electoral mechanism which do not enter into the present survey. The only two important additions to election legislation, since 1883, are (*a*) the Corrupt and Illegal Practices Prevention Act of 1895, which deals with false statements of fact with reference to the personal conduct or character of a candidate; and (*b*) the Public Meeting Act, 1908. Both these Acts will be briefly considered in their place. Beyond this legislation, however, we have to take into consideration (*a*) the decisions of the election petition judges with regard to the interpretation of these statutes; (*b*) the decisions and interpretations of the old Election Committees, who tried election petitions before 1868, when the House of Commons decided to delegate its functions in these matters to one judge, and in 1879 to two judges, of the High Court, and (*c*) certain election customs, now universally recognised as reasonable and fair. Most of these are legal, but one or two are of extremely doubtful legality, though, by a kind of tacit agreement between parties, they are never challenged. Such, for instance, is the employment of paid party agents, sent down from the central offices of the party organisation, to assist in by-elections. These gentlemen are remunerated from the central party funds, but the money which they receive is not reckoned among the election expenses, where, strictly speaking, it certainly ought to appear.

As the first essential of an election is the existence of at least a couple of candidates, we shall fitly begin our investigation by asking what a candidate is. The question is one of extreme importance, for, broadly speaking, as soon as a political aspirant becomes a "candidate" his election expenses, to which there is a statutory and peremptory limit, begin to "run"—that is to say, any money spent after that date by his agents, in the furtherance of his candidature, must be included in the return of election expenses. The Act of Parliament (Sec. 63 of 46 and 47 Vict., c. 51) defines the expression "candidate" as meaning, unless the context otherwise requires, any person who is elected or nominated, or "declared by himself or by others to be a candidate on or after the day of the issue of the writ for such election, or after the dissolution or vacancy in consequence of which such writ has been issued." This is fairly vague, so that we may profitably turn to a few judicial decisions on the subject. It was unsuccessfully contended at Montgomery and Walsall that a person could not become a candidate (at a general election, of course) till the dissolution. In Stepney expenses incurred several weeks before the dissolution (when the respondent was still the sitting member in an existent Parliament) were held to be election expenses. In Rochester the expenses of two conversaziones, which took place two months before the election, were held (assuming the functions to be legitimate) to be election expenses. In Lichfield the principle that the election campaign may really, for the purposes of a return of expenses, extend back a considerable time before the election, was applied to the expenses of a meeting held four months before the dissolution. In Cockermouth (1901) it was held that the candidature began six months before the election, while in Haggerston the period was extended to three years. In Monmouth (1901) we are told in the last edition of Rogers that it was suggested by Kennedy, J., but not decided, that after a candidate was selected there might be expenses of candidature, apart from election expenses, which need not be returned. Mr. Justice Darling held in Cockermouth (1901), where the candidate had been selected on April 2 and the election took place on October 14, that the expenses of a tea meeting on September 20 (but not given by the respondent) were incurred in respect of the conduct and management of the election. These examples will show what a wide difference of judicial opinion there is, even with regard to the apparently simple preliminary question—am I, or am I not, a candidate? The difficulty is a very real one. As I put it in an article in "The Times" on the eve of the general election of 1906, the candidate "is warned that a given sum is all that he will be allowed to spend on 'election expenses,' and that if he exceeds it his election will be void. But he is not told when the 'election' legally begins, and he is left entirely to his own judgment in deciding when it ends. An expense incurred three months before an election may not be an election expense, whereas the judges may take the opposite view of one incurred three years previously. The result of this state of things is that a candidate or his election agent must construct his return of election expenses more or less at haphazard."

As no definite and decisive principle is deducible from the statutes or from the decisions on the subject I will suggest to you three good working rules in the matter:—

(1) As a general practice, no expenditure which dates back further than six months from the polling day need be included in the return of expenses.

(2) But where money is spent with a direct view to the polling booth, the six months' rule must be disregarded and the expense, whenever incurred, should be included. Thus, registration expenses are excluded (unless they go on in full activity, contemporaneously with an election, which can only be the case if the election falls in the period between July and October), as well as the expenses of *bona fide* political associations supporting principles rather than a person. In conformity with this rule, the expenses of a meeting seven months before the election, at which a resolution of confidence in the party, or in the Government, was carried, will not be an election expense; nor will a resolution of confidence in the sitting member, unless the election is within sight. But if there was a resolution pledging the meeting to support Mr. Jones (whether he is a sitting member or only candidate) at the forthcoming election, then you will be running a risk if you do not put the expenses of the meeting in your return. At the present moment (November, 1909) the prospect of an election in January is so assured that no meeting now or recently addressed by a person whose name ultimately appears on the ballot paper in January can be safely disregarded as a factor in the return of election expenses by that person's agent.

(3) In forming your final judgment, remember that it may have to bear the scrutiny of an election court; and ask yourself whether you can, if necessary in the witness-box, give reasons which will commend your decision to the judicial mind in the cold, shrewd atmosphere of that tribunal.

In some respects a sitting member has the advantage over his prospective opponent in the matter of expenses. There is, I believe, no ground for the suggestion that the sitting member must be considered a candidate for the next election until he declares otherwise. If that were so, the sitting member's election expenses for the next election would begin to run at the close of the poll at which he was originally elected, and in the case of a protracted Parliament his actual fighting fund would be seriously depleted long before the actual contest began. The fact is that the sitting member owes it as a duty to his constituents to render them an account of his stewardship, and to address them on political affairs from time to time. Resolutions of confidence in him will not bring the expenses of such a meeting into the return unless it take place when the election is actually in sight. That is to say, a meeting held now, assuming that the election takes place in January, would undoubtedly fall into the return of election expenses. The expenses of the meeting are incurred with a direct view to the ballot box and are also within the six months' limit. Therefore they must go in.

The Act provides (46 and 47 Vict., c. 51, s. 28 (1)) that all expenses incurred in the conduct and management of the election should be paid through the election agent. But, as a matter of fact, the election agent is frequently not appointed until the parties actually go down into the arena for the contest. When, therefore, the agent investigates the position of affairs with a view to his return of election expenses, he will doubtless, for the reasons I have already given, find certain expenses which must come into his official return, though they were, in fact, paid before he was appointed. Thus, in an election next January you may find a meeting held last September the cost of which must, in your opinion, be regarded as an election expense. The cost of the meeting may have been paid by the local association. In that case it will be best for you to take over the expense, giving the local association a cheque for the hire of the hall, printing, and other legitimate expenses. You must be careful, however, that the expenses include no illegal item. If the association paid for the services of a band to enliven the proceedings you must specifically exclude the band from your repayment. If money was laid out in flags and banners you must specifically exclude them from your repayment. The best course would be to write a letter with the cheque by which you repay the money stating that you have struck out such and such items and can make no payment in respect of them. The presence of these illegal items is very regrettable, and I hope none of you will have to deal with them. But, if you have, the course which I recommend puts the real facts of the transaction on record, and your care in the matter would impress very favourably an election petition court. With the illegal items excluded, and the repayment shown in your return, you will have complied up to the limit of reasonable possibility with the requirement that all payments shall be made through the election agent.

But who and what is this election agent? His existence is a consequence of the enactment by the Corrupt and Illegal Practices Prevention Act, 1883 (s. 24 (1)), that on or before the day of nomination a person must be named by, or on behalf of, each candidate as his election agent. A candidate may, however, name himself as election agent. The object of requiring an election agent, either identical with, or distinct from, the candidate, is to have some person who can be looked to for an explanation of official malpractices: who can, if necessary, be sued, and who shall be endowed with sufficient authority to enable him to act up to the measure of his responsibility. As Mr. Justice Field said in the Barrow petition of 1886, "the election agent is the person who shall be effectively responsible for all the acts done in procuring the election. . . . He is to hire everybody; no man is to be paid money by anybody that does not pass through his hands. . . . He is a known and responsible man who can be dealt with afterwards and who can be looked to afterwards for an explanation of his conduct in the management of the election. It is not to be left, says the Legislature, to uncertain bodies of people, to floating committees or bodies of that sort, or even to a series of inferior people whom we know in the former days of elections were

called managers, and people of various descriptions and denominations, whose acts no one would be responsible for or know anything about. The object of the Act was, as it seems to me . . . that a respectable and responsible man . . . should be there to do all that was necessary."

It is desirable that, as far as possible, the election agent should play the part of a solicitor who is conducting a case that is on trial before a civil court. He is to stand at the point of official contact between the contending forces, and to be the medium of communication where arrangement or agreement are desirable in the interests of order and discipline. His duties in this respect necessitate the maintenance of courteous relations with the agent, or agents, opposed to him, so that there shall be frankness in communication and confidence that understandings, when once arrived at, will be loyally observed. It is, for instance, often agreed between election agents that they will take no technical objection to each other's nomination papers. But the maintenance of these courteous relations is inconsistent with violent partisanship, and for that reason it is better that the election agent should not appear on platforms as the public exponent and advocate of his candidate's views; and still more desirable is it that he should abstain from constituting himself the personal, as distinguished from the official, mouthpiece of his candidate. Between him and the candidate, however, there must be an absolute confidence, unclouded by the lightest breath of suspicion. No agent can conduct a campaign if some of the facts and incidents are concealed from him. He is the one person who should know all that takes place—"the one," because there is no other who is entitled to the same fulness of information. Even from the candidate himself the election agent should conceal, if he can, the untoward incidents of the campaign, the desertions, the revolts, the mutterings of "disgruntled" persons, and the anonymous letters. These last of the hostile elements of a campaign have very different effects on different temperaments, but, on the whole, they are better intercepted.

There is practically no legal restriction upon a candidate in the choice of an election agent. He may even appoint a person under age if he chooses to do so, though it would be very inadvisable. But if he engage a person who within the previous seven years has been found guilty by a competent court of corrupt practices, his election will be void. The penalty is the same if he *personally* engage such a person in any capacity connected with the *management* of the election, even though he be not a paid agent. In the case of an election agent who had within seven years been found guilty of corrupt practices it would be impossible for the candidate to deny that he had personally engaged him, since personal engagement is of the very essence of the appointment. In the case of any other person, it is a question of fact whether he was personally engaged by the candidate or not. The qualifications which a candidate should seek in his election agent are (*a*) an exact and exhaustive knowledge of election law and practice; (*b*) some experience, the larger the better, of dealing with men of all classes and of every

variety of temper, together with the ability to recognise each variety at sight; (*c*) courage, authority, and the power of rapid decision under all circumstances, and in most cases without conference with, or reliance upon, any judgment but his own; (*d*) finally, a philosophic imperturbability, which as an achievement in self-control yields precedence only to the patience of Job, upon which (except, perhaps, in the matter of the patriarch's habit of seeking relief for his feelings in extended speech) it should be faithfully modelled.

But suppose the election agent makes an honest mistake as regards the date of the commencement of candidature or in some other highly technical detail of the arrangements? Well, he will have to seek "relief." This expression "relief" will have to be used so often that I had better explain it at once. Election law is so highly technical, and its bristling technicalities are capable of such diverse interpretation and application according to the temperamental bent of the judicial mind, that in the absence of some mitigating expedient there is scarcely one election in a hundred that would stand against critical attack in an election petition court. The general election of 1906, for instance, provided us with a case where an important election document had been accidentally issued without the name and address of the printer and publisher, and with another case where a sub-agent had paid for the hire of a conveyance to take voters to the poll. In both these cases, but for the provision of "relief," the respective candidates must have retired from the field as soon as the error was discovered, or, if it had not been discovered till after the election, they must have vacated the seat if it had been won. "Relief," then, is a power conferred upon an election petition court (and upon one of the judges where the matter arises by way of application, and not upon petition) to excuse a candidate or other person liable from the consequence of a technical breach of, or non-compliance with, the myriad requirements and provisions of the Corrupt and Illegal Practices Prevention Acts, so far as they are concerned with "illegal" practices. There is (with one slight exception for the benefit of a candidate reported by an election court to be guilty, by his agents, but not personally, of treating or undue influence) no relief for corrupt practices. No relief will be granted for illegal practices unless the court is satisfied that the error arose from accidental inadvertence or accidental miscalculation, and that in other respects there has been an honest and *bona fide* endeavour to comply with the law. For example, a candidate who accidentally publishes a poster without the name and address of the printer will be relieved; but if he had done it deliberately, as an election stratagem, and then, having been discovered, sought relief from the consequences of his wrong-doing, he would not get it. Relief, in plain English, means the judicial acceptance of an excuse for an honest mistake.

As soon as the election agent is appointed he should make the fact known, and at the same time caution the public against election busybodies, by a printed notice, exhibited at the committee rooms, in this form:

COUNTY OF BLANKSHIRE.
(Smithville Division.)
GENERAL ELECTION 1910.
NOTICE.

I, John Jones, having been appointed election agent by William Smith, the Liberal candidate at the above election, hereby give notice that, on account of the provisions of the Act 46 and 47 Vict., c. 51, neither the said candidate nor I, his agent, will be answerable or accountable for any payment for goods supplied, services rendered, or expenses incurred by any person acting, or claiming or pretending to act, on his behalf, unless such purchase, service, or expense has been previously authorised in writing by me (or incurred by a duly appointed sub-agent acting within the limits of his authority).* And I further give notice that all claims, writs, summonses, and documents relating to the election may be sent to me as under.

(Signed) JOHN JONES.

Offices : 14, High Street, Smithville.

Subject to any special directions which he may receive from his candidate, the election agent will have the duty of selecting the persons who are to be employed for payment during the campaign. The candidate is permitted to employ (1) an election agent, (2) sub-agents in a county division, (3) polling agents—whom I prefer to call by their older and more convenient name of personation agents, (4) clerks, and (5) messengers. Whatever the size of the constituency there will be only one election agent, but the number of other functionaries who may be employed will vary: in the case of the sub-agents according to the number of polling districts, and in the case of the personation agents according to the number of electors on the register. The number of clerks and messengers is prescribed by the Act 46 and 47 Vict., c. 51, s. 17 (and Part I. to Schedule I). In a borough you may employ one clerk and one messenger for every 500 electors, or fraction thereof. That is to say, if there are 1,700 electors, you may employ three clerks and three messengers for the 1,500 electors (one clerk and one messenger for each 500) and an additional clerk and messenger for the odd 200 electors. In a county you may have at your central committee rooms one clerk and one messenger for every 5,000 electors or part thereof; and in every polling district you may have (in addition to your central committee room staff already mentioned) one clerk and one messenger for every 500 electors, or part thereof, in each district. If the county or borough is divided each division is considered a separate constituency. These regulations, however, are not an absolute restriction of the number of clerks and messengers, but only of their number at any one time. The significance of the statutory provisions was considerably widened by the decision in the Walsall petition, where it was assumed without question that for good reason one group of clerks might be substituted for another during the course of the election, provided that on no one day the maximum number of clerks was exceeded. Thus, if the maximum be seven, then A, B, C, D, E, F, and G may be employed on Monday, B, C, D, E, F, G, H, and J on Tuesday, C, D, E, F, G, H, J, and K on Wednesday, and so on. Whether this principle could be extended so far as to permit of a complete change of clerks and messengers every day, so that A, B, C, D, E, F, and G should

* The reference to sub-agents will only appear if the election is for a county or division of a county.

be employed on Monday and J, K, L, M, N, O, and P on Tuesday, with another similar alteration for Wednesday, is, perhaps, open to doubt. At any rate, I strongly advise those of you who may be election agents not to change the staff from day to day, but to take your men on for the whole period of the election. In this way your men get to know your modes of working, and you obtain an acquaintance with their special capacities, so that you can get the best out of them. Moreover, you narrow the area of danger from agency, to which I shall allude in detail at a later stage.

As soon as it is known that an election is pending a candidate, as well as his election agent and all those prominent supporters who are supposed to have "influence" at headquarters, will be assailed with requests for employment. If there is an election agent (as there will be unless the candidate is his own election agent) the applicants must be referred to him, and the election agent should make it perfectly clear that he will not tolerate interference with his responsibilities by persons who will seek to force employés upon him. He will take care to remind the applicants that if they are employed they lose their vote, and if the employment of a voter (such as the chief registration agent) is inevitable, he will expressly caution him, by the service of a printed or written notice, that he must not vote. The best way to do this is (1) to print on the form of appointment which is given to the employé when he is engaged the words, "No elector of this constituency who is paid by a candidate for his services may vote at this election"; and (2) to insert (just above the space for the signature) in the receipt forms to be signed by the employés the words, "I am aware that if I am a voter I may not vote at this election." You must bear in mind (1) that the paid worker himself, if he is a voter and votes, is liable to punishment; (2) that the vote will come off on a scrutiny; and (3) that unless you can satisfy an election petition court that you did your duty in the matter of warning your workers that they must not vote, you may find yourself and your candidate in peril of a charge of procuring prohibited persons to vote, which is an illegal practice. In the Stepney case there was a charge of this nature, and the judges found that the prohibited persons did in fact vote, and that the election agent took no sufficient trouble to prevent it. This they held to be neglect of duty, but they did not go so far as to find him guilty of the actual offence of procuring these persons to vote.

Paid canvassing is illegal. Section 17 of the Corrupt and Illegal Practices Prevention Act provides that at an election no persons may be employed save those enumerated in the First Schedule. Canvassers are not included in the schedule. It will be necessary for you to take care, therefore, that no paid agent who is employed by you in any election work, such as that of a clerk or messenger, carries on systematic canvassing. I say "systematic" because Mr. Justice Bruce in discussing, at the Lichfield petition, certain canvassing by men employed respectively as clerk and messenger, laid special stress upon its systematic character. My late friend, Mr. H. C. Richards, K.C., who was a specialist in election law, always took this view that it was

only *systematic* canvassing that was illegal in the case of a paid worker. He had fortified himself with the opinion of the then senior law officer of the Crown, who thought that a paid election clerk or messenger might canvass in his spare time, but not as part and parcel of his duties. In the presence of such authorities as these I almost hesitate to express a personal opinion. Yet I will say this, that, having regard to the danger of defining what is "systematic" canvassing, and to the wide range of judicial opinion from which an election court of two judges will be selected, I should myself never allow a paid worker to canvass at all. He will use his personal influence among his friends, of course. So much you need not prevent, cannot prevent, and do not want to prevent. But, as regards canvassing, in any form, I should make it quite clear to every worker, when he is engaged, that his abstinence from canvassing was a condition of his continued tenure of office.

Among paid workers the election agent's right-hand man should be the chief registration agent, unless he is himself the occupant of that position. The chief registration agent knows the ropes in every part of the constituency far better than anybody else. He will be personally acquainted with a great number of the electors, so that he can tell the election agent at once whether the acceptance of their proffered assistance, for instance, is safe. He can tell, too, what kind of speaker must be sent into this ward and into that; what topics are dangerous; what persons and interests must be conciliated; and he can materially help in deciding whom it is safe to offend, when it is time to play a strong card, and when it is desirable to temporise. The chief registration agent, as the election agent's principal assistant, will in these multitudinous ways render indispensable aid. Technically he is but a clerk, but actually he comes very near to being a deputy election agent. The best plan is to have him as chief clerk at the central committee rooms, of which he will take charge when the election agent is away.

When the Corrupt and Illegal Practices Prevention Act of 1883 was passed, the means of communication were by no means so highly developed as now. The chief agent, for instance, could hardly reach every point of the constituency by means of the telephone, nor could he, as now, have his motor-car (or flying machine) waiting outside the central committee room. Hence the permissive provision in that Act for the appointment of a series of sub-agents, one for each polling district. There can be no sub-agents in boroughs. The sub-agent is in effect a local election agent, and is, subject to the instructions of the chief agent, the official head of his candidate's organisation in the district to which he is appointed. By making a careful selection of the men for the sub-agencies, by marking out a general programme for their activity, and by allotting to each a specific sum (which must on no account be exceeded) from the statutory aggregate of expenses, the election agent can relieve himself of a vast amount of detail work. But he must bear in mind that he cannot repudiate the actions of his sub-agent. If the sub-agent commits an illegal act the candidate will have to pay the

penalty, unless he can get relief. Section 25 (2) leaves no doubt on this point by enacting that any act or default of the sub-agent which would, if he were the election agent, be an illegal practice, or other offence against the Act, is in fact to operate just as if he were the election agent. Cases have come under my own notice where a sub-agent has engaged a committee room in a public house, in ignorance of the peremptory provision of Section 20 of the Corrupt and Illegal Practices Act of 1883, which makes it an illegal hiring to have a committee room in any building where refreshments are sold. In the candidate or the election agent an illegal hiring is an illegal practice, and therefore it is so in the sub-agent. There was another case where a sub-agent, on the day of the poll, noticed that the supply of conveyances had run short, and forthwith sent round to the local jobmaster and hired a cab in which to take electors to the poll. This man was perfectly honest in his ignorance. He entered the cost of the car (with a note of the purpose for which it was hired) in his election accounts, and thereby gave the chief election agent one of the worst shocks he ever experienced. In this instance application was made for relief, and, there being no opposition by the other side (since the sub-agent's conduct was transparently honest), it was granted as a matter of course. But had there been a petition this affair would, of course, have formed the subject of a charge of paying money for prohibited purposes, and the application for relief would have raised a multitude of issues, some of which might have led to its refusal, with fatal consequences to the candidate. For such reasons as these my personal opinion is that it is better to work without sub-agents.

In the various committee rooms where you would be entitled to place a sub-agent you will do better to place either a clerk, or a local volunteer who has the capacity and the time to keep things on the move. Neither of these men has the plenary authority of the sub-agent; in fact, he should have no authority to incur any but trifling administrative expenses without the sanction of the chief election agent, or to embark upon any policy which may commit the candidate without the candidate's (or the election agent's) consent and approval. This is especially the case in the matter of bills and leaflets, for reasons which I shall at a later stage explain at length. In these days of rapid transit the chief agent ought to have no difficulty in making a personal visit to every important centre of activity at least three times a week. In a borough fight he ought to do it at least once a day. In many constituencies the train or tram facilities are ample for the purpose. Where they are not, the energetic agent will have his motor-car (or possibly his flying machine) always ready, and with its aid he can do wonders in the way of vigilance, stimulus, and control. An excess of the speed limit is not a corrupt or illegal practice even in an election agent, but I strongly advise you as a matter of election psychology against running risks in that direction. If you run over Jones's dog or knock down Smith's wife it may cost your candidate a hundred votes, quite apart from the damage and injury which are the immediate results.

With regard to the committee rooms (which must be hired by the election agent himself), all that I need do is to warn you of the provisions of the First Schedule of the Act 46 and 47 Vict., c. 51. These provide that in a borough you may have one committee room for each complete 500 electors or fraction thereof, and that in a county you may have (1) a central committee room and (2) one committee room in each polling district; and if the number of electors in the district exceeds 500, one extra committee room for each *complete* 500. Section 7 (1) of the Act provides that the hiring of committee rooms in excess of this number is an illegal practice. But, of course, there is nothing to prevent you from using any number of committee rooms, always provided that they are lent to you for nothing, so that you only pay for the number which the Act permits. Finally, there are four classes of premises which must not be used as committee rooms:

(1) Any premises on which intoxicating liquor is sold, whether wholesale or retail, or for consumption on or off the premises.

(2) Any premises where liquor is sold or supplied to members of a club or association, other than a permanent political club.

(3) Any premises where refreshments of any kind are ordinarily sold for consumption on the premises [e.g., the ordinary " roll and butter " shop.]

(4) The premises of any public elementary school in receipt of an annual Parliamentary grant.

In spite of the exception under (2) with regard to a permanent political club, I strongly advise you not to have a committee room on such premises. It might very well open the door to charges of treating, which would be very difficult to disprove.

This part of the subject reminds me that you may occasionally find yourself unable to avoid holding a meeting in a room which forms part of licensed premises, for the reason that no other accommodation is available. But there are two precautions it is essential you should take:

(1) All means of access out of the room in which the meeting is taking place into the part of the house where drink is supplied must be stopped up during the meeting. No person should enter the meeting through that part of the house where drink is supplied; and the precautions taken should be such that if a man in the meeting desires to obtain liquor, he must go right out of the meeting into the open air and then re-enter the house at another door. Precautions of this kind will prevent any suggestion that the persons convening the meeting were parties to treating..

(2) Notice should be served on the landlord by registered letter in the form which I give below:

RUTLANDSHIRE ELECTION, 1910.

NOTICE TO LICENSE HOLDERS.

I, the undersigned, being the election agent for John Smith, a candidate at the above election, hereby give you notice that the said candidate will not be answerable or accountable for the cost of any meat, drink, entertainment, or provision supplied by you to any person acting or claiming or pretending to act on his behalf in connection with the said election, nor for any other expense other than the sum of £1 agreed to be paid for hire of the room used by the said candidate for the purpose of a meeting of electors at your house.

Dated January 19, 1910. (Signed) WILLIAM JONES.

To Mr. Charles Robinson, Red Lion Hotel, Mugby Junction.

As regards the personation agents, these are only engaged for the day of the poll, and you can often get sufficient volunteers to do the work. The novelty of a day in the polling station, watching the actual process of balloting, attracts good men to offer their services; and every guinea that you can save in this way can be profitably spent in some other direction.

Apart from the election expenses, the election agent will require to know something of the "personal expenses" of the candidate. These are defined by the Corrupt and Illegal Practices Prevention Act of 1883 (Section 64) as including "the reasonable travelling expenses and the reasonable expenses of his living at hotels or elsewhere for the purposes of, and in relation to, the election." In practice, of course, these expenses will include not only the strictly personal expenses of the candidate, but also those which are necessitated by his hospitality extended, within legitimate limits, to persons who come down to help him as speakers or workers in the election. If the candidate is staying at a local hotel he may entertain his auxiliaries there and include the cost in his personal expenses. If he has his own residence in the constituency, he may do the same, whether the residence be temporary or permanent. This is social custom. But the candidate may not pay his friends' fares, since that is not customary among us. And this expenditure on entertainment must be strictly *bona fide*. The circumstances must be such that the hospitality is socially reasonable and is extended to persons who might have been entertained in the same way even if no election had been pending. If I am a candidate for a Birmingham constituency I may entertain at a local hotel (or in my house at Birmingham if I have one) any friends of similar social status who come from London or Newcastle to speak at my meetings or assist at my propaganda. I may even have champagne on the table at dinner, since it may be assumed that my friends are accustomed to that form of refreshment and the cost may rank among my personal expenses. But if my friends from Newcastle happen to be colliers and I entertain them with champagne at dinner, the transaction will probably be scrutinised much more closely, if it should come, as an item of my personal expenses, under notice of the election judges, since it will, in their eyes, begin to assume a peculiar and questionable aspect. It is not that the law objects to a collier having champagne. It is simply the judicial jealousy of anything that looks like an illicit influence. Much more severe will be the scrutiny if the visitors are *local* colliers, because then there will be a grave suspicion that the expression "personal expenses" is being made to hide something very like treating. Finally, if the colliers are voters in the constituency where I am standing, my so-called "personal expenses" will be overhauled if the matter goes before an election petition court, and I shall have but little chance of escaping the loss of the seat on a charge of treating.

If the candidate is living at an hotel, then his hotel bill, plus an allowance for travelling and incidentals, will form your total. If he took a house within three months of the fight, it would be better

to include the whole of the expenses attaching to his tenancy. If it were taken earlier, three months' expenditure need only be included. If he is, and has been for a period long anterior to the election, a *bona fide* resident of the constituency, so that his household expenses would have been incurred whether there was a contest or not, you might put in a month's ordinary household expenses, plus an estimate of the additional amount spent in entertaining friends and helpers during the contest. The best way to proceed is to send a formal letter to your candidate, immediately after the election, asking him how much his personal expenses were, and reminding him that if they exceeded £100 they must be paid through the election agent. If they are under £100 you have no concern with the items. It will be sufficient for you to put the candidate's reply, stating the amount, among the vouchers which you file. I know of no case where the personal expenses have been challenged. None the less, I recommend you to comply strictly with the Act lest your own return should yield the first decision on the subject.

Outside your paid staff there are two classes of workers upon whom you will have to keep a close eye. These are (1) the more prominent workers belonging to the local party organisation, generally called the Blankshire Conservative and Unionist Association, or the Blankshire Liberal and Radical Federation, or some similar title, and (2) the "Outside Organisations"—that is to say, the various independent bodies who come into the constituency to assist the one side and to embarrass the other; sometimes to embarrass both. As the whole point of the discussion of your relationship to these people turns on the question of agency, it will be desirable to consider what agency, in the election sense of the word, actually is, and what are the dangers arising from it.

Within the scope of his authority, which is conterminous with the area and activity of the campaign itself, the election agent is the plenipotentiary of the candidate. The repudiation of his agency, therefore, in the event of his being guilty of corrupt or illegal practices, is quite out of the question. The repudiation would be almost equally difficult in the case of one joint candidate by the other, or of any of the paid election staff, as well as the prominent and responsible leaders of the party organisation, although their services are quite honorary. With regard to the other active combatants (and, of course, to a slight extent in the case of those already mentioned) there arise the most complex questions with reference to the candidates' responsibility for their actions—questions which, if determined adversely to the candidate on the hearing of a petition, may cost him a hard-won seat. There is a special doctrine of election agency applicable to these cases, which differs very widely from the ordinary legal doctrine of agency. The old election petition committees tried to evolve a principle which should be elastic enough to reach instances where a candidate sought to profit by the wrongdoing of others, while strongly protesting that he was in no way responsible for, or capable of controlling, their actions. The election doctrine of agency is the fruit of their efforts. They knew that no man was likely deliberately and

openly to authorise the commission of an act which would, if brought home to himself, be fatal to his election. But if such acts were, in fact, performed and if they benefited him, then the question arose, not whether there was agency in the ordinary legal sense (since the precautions of the parties would prevent the existence of any evidence cogent enough to establish it), but whether the political relations between the persons concerned were such, in length of period and degree of intimacy, as to establish agency in the election sense of the term. What that sense is we cannot define in precise terms. But I think I can give you a good working knowledge of the "drift" of the doctrine.

The ordinary legal agency may be created in four ways: (1) By express contract, (2) by implication, (3) from necessity, and (4) by ratification. Agency by express contract is the kind of agency which exists in the case of the election agent and his staff where there is an explicit and specific engagement. Agency by implication is that which is created, for instance, when a coachman, who has the care of his master's horses, is understood to possess authority to order corn for them as his master's agent. Agency by necessity has no application to election work, so that the special doctrine of agency, as applied to elections, is a modification, by way of extension, of agency by implication and agency by ratification. For instance, assuming for the moment that an action (based upon the alleged existence of agency in the ordinary sense) would lie for the recovery of money laid out in bribery at the alleged request of defendant, a candidate, the main question would be whether, in fact, the defendant had authorised the laying out of the money. If it could be shown that the person who had paid the bribes, though, in fact, he was an agent of the defendant, had in this instance been expressly prohibited from laying out money in that way (and especially if the persons who received it were well aware of the prohibition), the action to recover it from the candidate would fail. But as regards the agency in the election sense, the question would be totally different. The proof of general agency (*i.e.*, of agency in the ordinary legal sense) would render abortive any protection that was sought in the express prohibition of the corrupt acts, however honest that prohibition might have been. The corrupt acts of the agent, though forbidden by the candidate, would, if within the very liberally defined scope of his authority, be fatal to his candidature.

In the ordinary sense of the word, a man cannot easily make another his agent without being aware of it and, in the great majority of cases, without having his eyes fully open to what he is doing. But he may create an agent in the election sense of the word without being conscious of what is being done and, in fact, in such a manner that when the person is ultimately decided to be his agent nobody is more astonished than himself. The reason for this wide difference between common law agency and agency in the election sense was stated in the Gloucester petition (1873) to be that where any corruption is intended the candidate is most carefully kept in intentional ignorance of it. In the Wigan case it was said that the position of the

candidate in the election sense was analogous to that of a man who buys a yacht to race in his name and finds a captain and crew on board. The fact that he consents to sail with them makes them his agents for the purpose of sailing the race in accordance with the laws of the course. The fact is that in the ordinary relations of life a man has very large powers of control over his agents and knows, or can with reasonable diligence discover, who they are. But in the conduct of an election his political fate may be jeopardised by persons over whose actions he has little or no control, like the tradesman who canvassed a street with him and then proceeded to the nearest public-house and called for "drinks round and the health of the candidate." Even if they act in defiance of his orders, where he has power to give them, or do the wrongful act maliciously, with the intention of injuring him, or are totally unknown to him, yet still he may find that they are held to be his agents. This question, whether A is or is not the agent of B at a certain election is of no great moment while the contest proceeds. But when the contest is over and the electors have delivered their verdict it may become of very great consequence indeed. For then it becomes possible for an appeal to be made from the electorate to an election petition court, whose judgment, possibly setting aside that of the electorate, may be very largely based upon the individual opinions of two judges with regard to the nebulous doctrine of agency in the election sense. The result may be that the candidate is exposed to the risk of the very severest penalties, not because he himself has done anything wrong, but because, in the opinion of the judges, some person over whom neither candidate nor constituents had any control has been guilty of a breach of election law. These considerations will, I think, make it clear how vast the sweep of this election doctrine of agency is. I can hardly sum up more vividly than in the quite recent language of Mr. Justice Channell, in the Great Yarmouth case. The learned judge said that the "substance of the principle of agency is that if a man is employed at the election to get you votes, or if, without being employed, he is authorised to get you votes, or if, although neither employed nor authorised, he does to your knowledge get you votes, and you accept what he has done and adopt it, then he becomes a person for whose acts you are responsible in the sense that, if his acts have been of an illegal character, you cannot retain the benefit which those illegal acts have helped to procure for you. . . . That is, as I apprehend, clearly established law. It is hard upon candidates in one sense, because it makes them responsible for acts which are not only not in accordance with their wish, but which are directly contrary to it."

With these considerations fresh in our minds we may go on to consider the two classes of election workers whom I mentioned a few minutes ago—

(1) As regards the local political association. If there is such a body (as there is almost certain to be) the election agent should advise his candidate to procure its dissolution as soon as the candidates come down into the arena. In that manner you get rid to a large

extent of any risk as to its agency in the aggregate, and you weaken any evidence of agency as regards the individual members. In that way you narrow the area of the candidate's responsibility and may save him from otherwise inevitable disaster. There is in these precautions nothing that is improper or illegitimate. The election doctrine of agency, as I have shown you, is so unreasonably wide as to lead to the infliction of serious hardship upon men whose only fault is their eagerness to win a civic battle. That being the case, you have the clearest right to prevent that doctrine from operating to the detriment of the man whose interest it is your first duty, as election agent, to safeguard. For that reason I recommend you to create among the voluntary workers no formal bond whatever. Let their only common characteristic be the support of the cause and the candidate.

(2) The "Outside Organisations" form an element of a modern election which does not seem to have entered into the contemplation of those who framed the great Corrupt and Illegal Practices Prevention Act of 1883. They had, in fact, no conception of the multitudinous interests which take the field in a modern election—I mean the outside organisations. Very early in your election work you will find a number of these irregular troops in the field opening their own committee rooms, employing their own clerks, canvassers, and speakers, and covering the local hoardings with vast displays of colour and argument. Some of these people will be working for causes which your candidate represents and others for causes to which he is opposed. If your candidate is a Unionist he may have a powerful Tariff Reform organisation working in his favour, whilst a Free Trade campaign will be carried on for the benefit of his opponent. But whatever and wherever these organisations may be, you must, if you are election agent, leave them to their own devices, and you must seriously warn all your paid staff and all the prominent people who would be held to be agents of your candidate, as well as the candidate himself, that they must practise the same aloofness. Of course, I am not suggesting anything in the nature of hostility or offensiveness. If it were desirable for you to define verbally your attitude you might say, speaking, for instance, as the agent of a Liberal candidate, to some Free Trade organisation who had come down and was working, "My candidate is in full sympathy with your aims and welcomes your assistance. But he cannot in any way officially recognise you, or work in actual association with you, nor can he allow such recognition or co-operation on the part of any of the persons who might be held to be his agents." I have no doubt that at a very early date the absolute legal irresponsibility of these outside organisations will have to be abolished, and that their position and powers will then be regulated and defined by statute. Until that statute exists you must adopt the attitude which is suggested by experience of the best interpretation of law as it stands, and make it clear that in your official capacity you are as ignorant of their existence as one newspaper is of the existence of any other. If you take the other course, you will make these people your agents, and if

there is a petition against your candidate there will be a charge of omitting *their* expenses from *your* return. If they are held to be your agents, that charge will be fatal; and remember, evidence that you frequented the inside of their committee room, or were seen, for instance, directing the pictorial adornment of the outside of it, will go a long way to enmesh you in this awful net of agency, and so, perhaps, to imperil the results of a long and arduous contest.

We will now take the various classes of election offences in detail, examining the existing legal provisions with regard to each. As you know, there are two great classes of election offences—"corrupt" practices and "illegal" practices. Every corrupt practice is illegal, but every illegal practice is not corrupt. The corrupt practices, in the election sense, are bribery, treating, undue influence (*i.e.*, intimidation, threats, or menaces, for instance), personation, and the making of a false declaration with regard to the return of election expenses. This list is exhaustive. The illegal practices are the minor offences, such, for instance, as providing bands and banners, paying for the hire of conveyances to take voters to the poll, or exceeding the statutory maximum of election expenses. Many attempts have been made to define these two classes of offence so as to bring the essential difference into logical prominence. For instance, Mr. Justice Field said in the Barrow petition that "a corrupt practice is a thing the mind goes with. An illegal practice is a thing the Legislature is determined to prevent, whether it is done honestly or dishonestly. Therefore the question here is not one of intention, but whether in point of fact the Act has been contravened." Perhaps I can make the distinction clearer by pointing out that a corrupt practice is such that no man of ordinary intelligence could commit it without being fully conscious that he was doing wrong. There can be no corrupt practice without a corrupt intention. That which lawyers call the mens rea—the corrupt or vicious mind, consciously bent upon the performance of an act known to be wicked—*must* be present and actively operative in the case of a man who bribes or (generally speaking) treats or personates a voter. Intimidation, again, is an act which must involve wilful wrongdoing. But it is otherwise with an illegal practice. A man of the highest character might hire a trap to take voters to the poll without the slightest idea that he was committing an offence against the law. Again, A. B. prepares, with his own hands, a placard containing certain statements which he is anxious to bring to the notice of the electors on the day of the poll, and pays a voter to display the placard on the wall of his house. There is nothing ethically wrong here. But (unless the voter so paid carries on the regular business of displaying advertisements for payment) an illegal practice has been committed; and if A. B. is the election agent of the candidate, "relief" will have to be obtained.

Beginning with the corrupt practices, therefore, we may say that bribery is the deliberate purchase or sale of votes for money or money's worth. Every person is guilty of bribery who directly or indirectly gives, lends, procures, agrees to give, agrees to lend, agrees to procure,

offers, promises, promises to procure, or promises to endeavour to procure any money or valuable consideration or any office, place, or employment to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, to induce any voter to vote or refrain from voting; or to induce such voter to vote or refrain from voting; or to induce such person to procure or endeavour to procure the return of any person, or vote of any person. The offence is also committed by the voter or other person who, either on his own account or for another, receives, or agrees or contracts to receive the gifts, loans, offers, promises, procurements, or agreements, either before, during, or after an election; any person who provides money with intent that it, or any part of it, shall be expended in bribery; and any person who pays money in discharge or repayment of money so expended. Acts of the same kind, where food, drink, or entertainment is (or are) given will amount to treating. You will notice that the definition of bribery penalises both briber and bribee for what is a serious criminal offence, and therefore makes it impossible to charge one without the other. At the root of all the many instances enumerated there is the element of individual bargaining directed to control an individual vote. This is the essential distinction between bribery and treating. Bribery is performed in individual cases, treating in the mass. Bribery is directed to incite or control the vote; treating, in the main, to confirm its existing tendency and to enthuse, or at least to excite, the voter. Voters known to be favourable are not bribed, for the act would be superfluous, but they are occasionally treated. The giving of meat, drink, and entertainment to large numbers of persons can be made to "square" with recognised social conventions, so as to be explainable, if challenged, in that way. This is not the case with money bribery, since it is not the custom to distribute pecuniary gifts. There may, of course, be such a thing as wholesale bribery on such a scale that the election could not possibly be regarded as the free expression of political opinion or allowed to stand. This state of things is known as general bribery and voids the election at common law, quite apart from statute.

Given the legal proof of the act or acts alleged to constitute bribery, the whole question resolves itself into one of motive. Was there a corrupt intent? That question is most difficult to answer where the alleged bribery consists of donations and subscriptions to charitable and other quasi-public institutions and the judges have displayed a marked reluctance to treat as corruption this ambiguous generosity on the part of a candidate. Of course, if it began on a lavish scale on the very eve of the election, there would be no doubt of its character. In other cases, however, it takes the form of long-continued gifts to various societies and organisations. Of isolated acts of alleged private bribery we do not hear much nowadays. Of course, nothing is easier than for a man to swear that the candidate gave him a sovereign, accompanying the gift with a significant wink. If the alleged act is corroborated by other evidence and if the Court believes that the candidate might have been rash enough to commit bribery in the presence of witnesses, he will probably have only his own oath

between himself and disaster. I remember a case where the voter swore that the candidate gave him a sovereign, with a hint that it was the purchase price of his vote. Cross-examined, the voter remembered the occasion perfectly well. Asked what the weather was, he replied that it was a bitterly cold day and the ground was covered with snow. As the election had taken place in the height of the summer, this answer was fatal to the charge. Or take another case. On the evening before what was expected to be a very close poll the adult daughter of one of the candidates (who was a prominent and successful worker on his behalf and undoubtedly his agent) visited a voter and presented him with a small sum of money (about 2s. 6d.) and with the contents of a basket which held a jug of cream, a dozen eggs, and a pound of fresh butter. The man was a widower, with two or three young children. He was a semi-invalid, living in squalid circumstances in a wretched by-street. His political views were doubtful, if indeed they existed in definite shape at all. The facts were not disputed, but the voter himself was not called. He feared that his evidence must in any case antagonise some of his friends and frankly stated that if he were compelled to enter the witness-box he would say that he had forgotten all the circumstances. In support of the contention that this was an act of bribery it was urged that the lady had not been similarly kind to any other voter and that she had never before, and never since, bestowed any benevolence on this man. The reply was that the lady was actuated simply by natural womanly kindness and sympathy. These, and not any idea of securing a vote for her father, took her to the voter's home, with her basket of dairy produce, on the night before the poll. There was some reason to believe that the recipient of the gift did, in fact, vote for the lady's father, but this was not certainly known. Was this bribery? There was only one person who could have given anything approaching a positive answer and that was the lady herself. If (which was denied by herself) she gave the bounty with the intent that it should influence the vote, she was guilty of bribery. If she acted in natural womanly sympathy with human misery, she was not. Anyhow, the court declined to listen to any suggestion of a corrupt motive. But you must not therefore imagine that baskets of dairy produce may be freely distributed by a candidate's daughter on the eve of the poll. Five baskets might, and ten baskets almost certainly would, assume a sinister aspect when viewed with the jealous eyes of an election petition court.

If you should be confronted, as election agent, especially at this time of the year (November), with any questions arising out of gifts by your candidate, you may form a sounder judgment by ascertaining what has been the custom of the candidate in years gone by. The candidate has his country house in a certain village in the constituency. Ever since he lived there, and for years before he was a candidate, he has sent a Christmas present—a turkey, a joint of beef, or the like—to all the poorer villagers. Is he to do it this year? Well, I should advise him not to do so, with an election pending in January. But clearly his gifts would stand upon an altogether

different footing from those of a man who, having just been adopted as candidate in a constituency where he has had no local residence or interests, sends out gifts at this coming Christmas and goes to the poll in January. The principle is the same as that which we have already formulated with regard to meetings. If the member has always made a tour of his constituency in September and he did it this year in accordance with annual custom, the expenses need not worry you. If you can get them into the return by all means include them. If you find you cannot, I think you need have no misgiving about omitting them, on the ground that they were an annual custom or expense, not incurred for the immediate purposes of the ballot box. But it would be otherwise with the meetings held last September of a candidate who was not the sitting member. They are clearly held with a direct view to the ballot box.

If any cases of alleged treating come to your notice do not neglect them. If they are on the other side, get a note of details and witnesses, in case you want to present a petition. If they are on your own side, find out the facts and deal with the affair in such a manner as shall leave no doubt of your attitude. Towards the close of a hotly contested election, some few years ago, a friend of mine, the election agent for one of the candidates, received a letter in some such terms as these:

Dear Sir,—As you are no doubt aware, Mr. A B has been working for Mr. Smith (the candidate) in my bar of an evening for a fortnight or so. Having now supplied over £10 worth of drinks to his orders I should take it as a favour if you would send me something on account. This is between ourselves.

Yours truly,

My friend, in asking me how he had better deal with a matter of this kind, said he supposed the best thing would be to ignore it. I pointed out to him, however, that inasmuch as it was impossible to tell where the affair would end, his attitude ought to be instantly put upon record. A reply was therefore sent, by registered letter, expressing the agent's astonishment that the publican should suppose he could even countenance a flagrant breach of the law, much less that he should actually pay money for its commission. The letter also contained a reminder to the publican that the fact of his permitting systematic treating in his bar, if it came to the knowledge of the licensing authority, might not facilitate the renewal of his license. That ended the matter. No further claim or suggestion was ever made. But consider—if there had been a petition, and if these cases of treating had been brought in, how much stronger was the position of the agent and of the candidate, with this letter on indisputable record, than it would have been if the episode had been ignored, as though the agent were afraid to tackle it.

The question whether an employer might give his workmen a holiday on the day of the poll, without risking the suggestion that he was thereby bribing them, and consequently, if he were an agent of the candidate, imperilling the whole election, was for some time the subject of considerable perplexity. The doubts are now set at rest by 48 and 49 Vict. c. 56, which legalises the giving of a holiday under these circumstances, provided (1) it is given to all alike; (2) is not given as an inducement to vote for any particular candidate; and (3) is not

refused to any person in order to prevent him voting for a particular candidate.

Before leaving this subject I want to say a word about the not uncommon practice of providing what is called "refreshment for the workers" on election day. The provision of meat and drink in this way is excessively dangerous, even if it is *bona fide* intended only for the convenience of the candidate's avowed and whole-hearted supporters. They may introduce persons who are not whole-hearted supporters, in order that the latter may share the bounteous provision which has been made. In such circumstances the materials for a good *prima facie* case of treating are instantly created. Again, it only needs proof that the meat and drink were provided as a reward for services rendered to transform the whole transaction into a case of illegal payment or of illegal employment. My advice is, provide no refreshments in this way. I ought to add that a wager, if designed to corrupt a voter, will vitiate the vote. Suppose the candidates to be A and B. A voter, C, who is in necessitous circumstances, is a supporter of A, and intends to vote for him. D, the secret agent of B, bets C £100 to 1 that B will not be returned. C has now a large interest in the return of B, for whom he ultimately votes, in the desire to win the bet. Clearly this vote cannot stand.

Next to bribery and treating, among the corrupt practices, comes undue influence. There are few men who possess no influence at all among their fellow-creatures, and as long as they employ it properly the Legislature neither does nor indeed can prevent its operation. You may employ all your powers of persuasion upon a voter; you may even appeal to religious sanctions in aid of your appeal. So far you are on safe ground. But if, the voter being a man of only moderate intellectual calibre, you go on to threaten him with spiritual pains and penalties if he does not vote as you desire, and still more so if you threaten to take away his employment, or subject him to physical restraint or violence, you are guilty of undue influence. The offence is defined for the first time in Section 5 of 17 and 18 Vict. c. 102, and this section, repealed and substantially re-enacted by Section 2 of 46 and 47 Vict. c. 51, is now the statutory authority on the subject. The section provides that "every person who shall directly or indirectly, by himself, or by any other person on his behalf, make use of or threaten to make use of any force, violence, or restraint, or inflict or threaten to inflict by himself or by any other person any temporal or spiritual injury, damage, harm, or loss upon or against any person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting at any election, or who shall by abduction, duress, or any fraudulent device or contrivance, impede or prevent the free exercise of the franchise of any elector, or shall thereby compel, induce, or prevail upon any elector either to give or to refrain from giving his vote at any election, shall be guilty of undue influence." By Section 3 of the same Act undue influence is made a corrupt practice, and so becomes capable (if committed by a candidate or his agents) of avoiding an election, subject to

precisely the same considerations with regard to motive as bribery and treating. It is, however, a much more impalpable and insidious influence than either of the other two of these triplets of corruption. The use of brute force or violence is not a common form of undue influence in our day. It is too easily susceptible of proof, and too difficult of excuse or explanation, for it to be a safe weapon to use. It is in its other forms that it is used nowadays, where it is used at all, and, of course, there are cases where that which looks, at first sight, like undue influence, may, upon closer scrutiny, be seen to be perfectly innocent. As Mr. Justice Willes said in Blackburn, "Where an employer has a mixed motive for dismissing his man, where he has a reason for getting rid of him apart from his politics, is the employer bound, in point of law, to abstain from getting rid of him merely because of the general election coming on? Well, I think that in point of law, as an abstract question, he is not bound to abstain. But I think any sensible man or sound lawyer advising him would say, 'You may do so; but take care how you do so, because, unless you prove clearly that you have a good ground for discharging your servant apart from the political one, it is inevitable that your discharge of him will be imputed to your dislike, not of the man himself, but of his politics.'" Occasionally this species of undue influence takes a curious form. In Northallerton a person threatened to give up his pew in a Nonconformist chapel unless the minister voted in a certain way. This was held to be intimidation. On the other hand, direct spiritual intimidation, the actual threat of divine displeasure if the vote is cast in a certain way, is extremely rare in England, simply because it would be ineffective. I need not therefore trouble you with any discussion of it.

The expression "fraudulent device or contrivance" in the section will cover such expedients as abduction, by a trick, and for a time only, which is not an uncommon election device. The voter is got out of the constituency on the day of the poll, and kept away till the ballot-boxes close. Another of these obscure forms of undue influence consisted in the attempt to mislead the voter, by means of some fraudulent device or suggestion. For instance, the voter receives a specimen poll card with the "X" marked opposite the name of a certain candidate, and a printed intimation that unless he marks his ballot-paper in that way his vote will be lost. What the voter frequently understood (and what, it was alleged, he was intended to understand) in these cases was that unless he placed his "X" opposite the name of the candidate in whose interest the misleading missive had been sent to him, his vote would be lost. Still another and curious device, which is probably fraudulent within the meaning of the section (see Northallerton, 1 O'M. and H., 169), is worked by means of "pairing." A and B, voters on opposite sides, agree to pair. B, in pursuance of a fraudulent intent, breaks his tacit pledge, and votes, thereby destroying A's vote by a discreditable trick. This, device, however, is now so rare as to be negligible as an electoral influence.

The next of the corrupt practices is personation, a term which explains itself. The legal definition is contained in 35 and 36 Vict., c. 33, s. 24, which provides that a person shall be deemed guilty of personation at an election who "applies for a ballot paper in the name of some other person, whether that name be that of a person living or dead or of a fictitious person, or who, having voted once at any such election, applies at the same election for a ballot paper in his own name." This double voting by the same man we may call self-personation. For instance, let the voter reside in Mile End and have a shop in Whitechapel. He will be on the register in both constituencies; but as they are themselves only divisions of the old borough of the Tower Hamlets, the voter would, if he voted on both qualifications at a general election, have given two votes in what is, in fact, only one constituency. Hence, as soon as he has voted on one qualification, he is guilty of personation if he attempts to vote on the other at the same election.

The established machinery for the prevention and detection of personation consists of the professional vigilance of the returning officer or the presiding officer and his assistants, supplemented by the partisan activity of the personation agents. The returning officer, as you know, is the responsible head of the whole official machinery at an election. A presiding officer is the responsible head of a single polling station only, and, of course, acts under the instructions of the returning officer. The returning officer may himself, if he choose, be the presiding officer at one of the stations. If the presiding officer has doubts about the identity of an applicant for a ballot paper, he must, if required to do so by one (or both) of the personation agents, "put the question"—that is to say, he administers an oath and then asks, "Are you the same person whose name appears as Alfred Brown on the register of voters now in force for the [constituency, described with technical exactness]? (6 and 7 Vict., c. 18, s. 81.) The form of this question should be carefully noted. It is not an inquiry whether the voter's name *is* Alfred Brown, but whether he is the person represented on the register as Alfred Brown. Thus if the person on the register appears by mistake as Charles Brown it will be quite proper for Alfred Brown (who is really the elector to whom the entry refers) to take the oath and proceed to vote. If the question is not directed against the identity of the voter, on the suggestion that he is personating some other person, it may take the other form allowed by the same section, and directed against self-personation: "Have you already voted either here or elsewhere at this election for [the constituency, described with technical exactness]?" As this part of the electoral machinery is extremely important, we will go into it with a little more detail when we come to consider the act of voting. At this point I need only remind you that there is no such thing as an authorised personation, however honest and even praiseworthy the motives of the personator may be. If A, an eager but infirm politician, anxious that his vote should not be lost, sends B to personate him, with instructions how to mark the ballot paper, B may quite

honestly perform his mission as between himself and A, but he will none the less be guilty of the full offence. Personation, and the aiding, abetting, counselling, and procuring of personation are not only corrupt practices, but felonies. In this case, however, as in that of the other corrupt practices, the corrupt mind is essential to the offence. A voter whose name is William Smith, but who appears on the register as John Smith, may properly apply for a ballot paper in the name of John Smith, for he is the person signified by that name on the register. But if the voter actually is John Smith, and William Smith seek to obtain the ballot paper by giving the name of John Smith, it will be very difficult to save him from a conviction for personation.

The last of the corrupt practices is committed by a candidate or election agent who knowingly makes a false declaration (before a justice of the peace) verifying the accuracy and completeness of the return of election expenses. This offence is wilful and corrupt perjury and is (by Section 33 (7) of 46 and 47 Vict., c. 51) also made a corrupt practice, so as to entail the disabilities for a corrupt practice, which are not attached to the ordinary offence of perjury. Mere failure to make the return (as distinguished from making it falsely) is only an illegal practice. These provisions with reference to falsity of the return are properly drastic, but no charge of wilful falsity has ever arisen under them in connection with the return of the expenses of a Parliamentary candidate. The charge of omitting various items from the return, which almost always forms part of the petitioner's case on an election petition, has to do with technical, not corrupt, omissions. That is to say, it is concerned with expenses which the election agent, in the *bona fide* exercise of his discretion, did not consider to be election expenses in accordance with the principles which we discussed when we were considering those questions.

In all these offences there is a "corrupt" element, and they are all corrupt practices. There is, however, one case where a "corrupt" element only creates an illegal practice. The payment, or promise of payment, of money to induce or procure the withdrawal of any person from being a candidate is, if done "corruptly," only an *illegal* payment. I mention it here to make it clear that, in spite of the use of the word "corruptly," the offence is not a corrupt practice.

The corrupt practices (the existence of the corrupt element being demonstrated) are all crimes. Personation is a felony, punishable on indictment by imprisonment, with hard labour, for a term not exceeding two years. The other corrupt practices are misdemeanours, punishable on indictment by imprisonment, with or without hard labour, for a term not exceeding one year, or by a fine not exceeding £200. A person may (provided he does not elect to be tried by a jury) be found guilty of corrupt practices by an election court. In that case the maximum penalty is six months' imprisonment, with or without hard labour, or a fine not exceeding £200. A witness on the trial of an election petition is not permitted to refuse to answer a question on the ground that the answer may criminate, or tend to criminate, himself, or on the ground of privilege. But if he answers truly he is entitled to a certificate of indemnity from the court, which

bars a prosecution in the event of his evidence having revealed, or suggested, his guilt. In this way the facts are elicited, while the witness is not (provided he answer truly) forced to criminate himself. The Public Prosecutor is represented by counsel at the trial of every election petition, in order that his attention may be called to any offences which are disclosed in the course of the proceedings.

In addition to the penalties under the criminal law there are grave disabilities. The report of an election court that a corrupt practice (other than treating or undue influence) has been committed by, or with the knowledge and consent of any candidate, or that treating or undue influence has been committed by such candidate, renders him incapable for ever of being elected for the county or borough in respect of which the offence was committed, and if he has been elected, his election is void. If the candidate is guilty by his agents (and not personally) the incapacity lasts for seven years from the date of the report of the election court to the Speaker, and if the candidate has been elected his election is void. A person convicted on indictment of any corrupt practice is incapable, for seven years from the date of the conviction, of being registered as an elector, or of voting at any election, or of holding any public or judicial office, and if he holds it, it is *ipso facto* vacated. Treating at an earlier election may imperil the validity of a later one.

I have already explained the distinction between corrupt and illegal practices. The illegal practices owe their definition and prohibition to the inquiries into the working of the electoral system which took place after the general election of 1880. It became evident at the time that, besides the old-fashioned election offences, such as bribery, treating, and undue influence, there had sprung into existence a new class, which found their origin and sustenance either in excessive, but colourable, expenditure on objects which were *prima facie* legal, or else in the lavish provision of the most mischievous stimuli, such as bands of music, flags, banners, and cockades. As recently as 1880 the election expenses of a distinguished modern statesman, a member of Mr. Asquith's Government, included £967 for the conveyance of voters to the poll. Such expenditure has now (as we shall see) been made an illegal practice. Strictly speaking, those acts which are generally known as illegal practices fall into two groups: (1) illegal practices, technically so described, and (2) illegal payments, employment, and hiring, which are only illegal practices if committed by the candidate, his election agent, or a sub-agent. The two classes of offence will be clearly distinguished in the course of our discussion. We will take the various offences in the order of their importance.

(1) False Statements (Illegal Practice).

The most important of the illegal practices is the offence which was first created by the Corrupt and Illegal Practices Prevention Act of 1895, prohibiting the making or publishing of a false statement with reference to the personal character or conduct of a candidate for the purpose of affecting his return. The offence is not committed

if the person charged can show that he had reasonable grounds for believing and did believe that the statement was true. The candidate is not liable, and the election cannot be avoided, unless the false statement was made by the candidate himself or by the election agent, or unless the candidate or the election agent authorised, or consented to, or paid for, the circulation of the false statement, or unless an election court reports that the election of the candidate was in fact procured, or materially assisted, by the false statement. The Act of 1895 was passed in consequence of the outrageous growth of the practice of slanderous personal attack, as distinguished from political criticism, at elections. The only remedy for these attacks, prior to the passage of the Act, was an action at law, which would not have been heard till long after the successful dissemination of the libel had, perhaps, cost the victim his seat. The cases decided under this Act up to the present time are not numerous. A false statement that a candidate was guilty of lying, cowardice, and bribery was held within the Act. So also was a statement that there was a "dark passage" in the life of the candidate, the reference being to a family tragedy for which the candidate was not in the slightest degree responsible. The Court of Appeal took the same view of a false statement that a candidate had locked out his pitmen for six weeks till stocks were cleared out and coal reached fabulous prices. After that it was alleged that the candidate found "that his 'conscience' would not allow him to starve the poor miner any longer." But where the gravamen of the charge was that the candidate's private conduct, as an employer of labour, was inconsistent with his public professions as a politician, Baron Pollock held that these were not statements of fact with regard to the "personal character and conduct" in the sense contemplated by the Act. Similarly Lord Justice (then Mr. Justice) Buckley declined to regard as within the Act a statement that the candidate was a "Radical traitor, always found on the side of Britain's enemies," and one of a band of persons who "were, during the summer of 1899, in correspondence with the Boers." Finally, the Court of Appeal declined to consider as within the Act the statement that a candidate had obtained the support of a prominent politician by "false pretences," or the suggestion that, as the Lord Chancellor put it, he "feigned political opinions in order to obtain support." The act charged upon the candidate in the alleged false statement need not be necessarily an unlawful one. Baron Pollock pointed out that such a charge as that of shooting foxes, brought against a candidate in a hunting constituency, or of drinking a glass of sherry, made with reference to a temperance advocate who is a candidate, are calculated to bring these persons into social odium, and are within the Act. But this dictum is limited by the local character of the social odium in the case of the candidate who is said to have shot foxes. That allegation would not be within the Act if made against the candidate for Whitechapel, where the shooting of a fox excites no indignation.

A point which has so far been almost entirely overlooked is the

fact that under this Act a false statement of fact made by the *candidate himself* with regard to his own personal character or conduct is an illegal practice. For example, A, a candidate, makes a certain statement about the personal conduct of B, his opponent. B replies that it is false, though in fact it is quite true. Here are two offences against the Act. B has made a false statement about himself by denying what he knows to be true: and he has also made a false statement about A by calling him in effect a liar. But all this applies only to false statements as to the *personal character and conduct* of a candidate. No false statement with regard to his political conduct, or with regard to political affairs generally, is illegal in the present state of the law, unless, of course, it is of such a character as to be within reach of an action for libel or slander.

Having regard to the drastic character of the Act relating to false statements, I should very strongly urge you not to allow a single bill or leaflet to go out till you have personally passed it. There are, in fact, three urgent reasons for this extreme caution. The first is the tactical consideration. It is essential to eliminate anything in which zeal or unwisdom may have exposed your candidate to a possible loss of support, either by giving offence to his own people or by laying him open to a deadly retort from the other side. A leaflet which will strengthen you in one constituency might work your ruin in another. In the second place, the imprint, which is an absolutely essential compliance with the Act of 1883, has a knack of being overlooked. Here is an attractive card, issued by the late Sir F. Dixon-Hartland in Uxbridge at the last election, without any imprint. The omission necessitated an appeal to the courts for relief and might have been a serious matter in the event of an election petition. In the third place, you have to bear in mind the provisions of this "False Statements Act," to wit, the Corrupt and Illegal Practices Prevention Act of 1895, which we have just been considering. A distinguished member of the Bar, destined for high office in a future Government, told me that he regarded a possible breach of that Act as so easy and yet so perilous, that he never allowed a single item of printed matter to be struck off till he personally (and not only his agent) had critically scanned every line.

(2) Improper Payment of Election Expenses (Illegal Practice).

The question of election expenses has already been discussed, and it would be superfluous to retraverse the ground. All that I need do is to remind you that the Acts prohibit (1) any incurring of expense or any payment in excess of the statutory maximum of election expenses; (2) any payment otherwise than by or through the election agent (other than the small payments which are excepted, like the "half a crown's worth of cartoons"); (3) any payment of accounts sent in after the expiration of the statutory period for their receipt (fourteen days after the declaration of the election); (4) any payment whatsoever (unless it be made by leave of the court) after twenty-eight days from the declaration of the election; and (5) any payment which is otherwise legal, if, being over forty shillings, it is not vouched for by a bill stating the particulars and by the receipt.

(3) Payments for Conveyances (Illegal Practice).

Section 7 (a) of 46 and 47 Vict., c. 51, enacts that no payment shall, for the purpose of promoting or procuring the election of a candidate at any election, be made on account of the conveyance of electors to or from the poll. The prohibition includes payments for the hiring of horses or carriages, as well as for the stabling and baiting of horses gratuitously sent from a distance for the purpose of conveying electors to the poll, or for railway fares, or otherwise. In the case of the person making or receiving the payment (whether candidate, election agent, or any other person) it is an illegal practice. The lending of any public, stage, or hackney carriage for the conveyance of electors to the poll is prohibited. In the lender a breach of this section is an illegal hiring. The offence subjects the offender to penalties (a fine not exceeding £100). If you write to ask for the loan of carriages, put in your letter some such words as these: "I ought, perhaps, to add that the candidate is forbidden by law to make any payment for the use of carriages which may be lent to him, or to their drivers, or to pay for food for their horses; and he may not use, even gratuitously, a carriage which is ordinarily let out for hire." The fact is, that the wide scope of the Act makes it impossible not only for the candidate to pay for the conveyance of voters to the poll but also for him to accept, or for jobmasters to give, the gratuitous use of vehicles which are on other occasions let out for hire. An enthusiastic jobmaster, who closes his yard to business on the day of the poll, and *bona fide* gives the use of all the vehicles for the purpose of bringing voters to the poll, would, therefore, commit a grave breach of the law. I have met with one or two cases where railway companies have offered to run special trains for outvoters if the candidate or candidates would guarantee a certain number of passengers. To do so would be a breach of the Act and you must beware of it.

The prohibition of payments for the conveyance of voters to the poll is subject to two exceptions: (1) A voter may pay for such a vehicle to carry him to or from the poll. If, however, on his way thither he gives a "lift" to a fellow-elector, he has been guilty of a technical breach of the law, unless his companion share the expense, as well as the luxury, of the ride. (2) The other exception is a special statutory provision—that is to say, payment is permissible (46 and 47 Vict., c. 51, s. 48) for the conveyance of voters across "the sea or a branch or arm thereof" (if they cannot reach the poll otherwise), and such payment forms no part of the statutory maximum. Few, if any, of you are likely to act in a constituency where this permission will become operative.

(4). Payments for Exhibiting Bills (Illegal Practice).

Section 7 of 46 and 47 Vict., c. 51, makes it an illegal practice to pay, or contract to pay, money to any *elector* on account of the use of any house, land, building, or premises for the exhibition of addresses, bills, or notices. The person who pays and the person who receives are alike guilty. But payment may be made to, and

received by, an elector whose regular business it is to exhibit bills for payment. Such, of course, is the familiar bill-poster.

(5). Committee Rooms in Excess (Illegal Practice).

A payment or contract for payment for committee rooms in excess of the number allowed in the First Schedule of the Act (46 and 47 Vict., c. 51) is made an illegal practice by Sec. 7 (1) (c).

(6). Voting by Prohibited Persons (Illegal Practice).

Voting by any person who knows that he is prohibited by statute from voting, or knowingly inducing such person to vote, are offences which, by Section 9 of the Act, 46 and 47 Vict., c. 51, are made illegal practices. This provision, the breach of which is in some cases a misdemeanour, must not be confused with the prohibitions directed against personation, which is a felony. Section 9 is intended to meet such cases as that of the voter who, being employed (or having been employed, see 30 and 31 Vict., c. 102) for payment at the election, nevertheless votes thereat. The enactment also reaches the election agent or other person who, knowing of their incapacity, procures these persons to vote. I mentioned the Stepney case to you at an early stage of our discussion.

(7). False Statement of Withdrawal (Illegal Practice).

Publishing a false statement of the withdrawal of any candidate for the purpose of promoting or procuring the election of another candidate is an illegal practice (46 and 47 Vict., c. 51, s. 9 (2)). There was an alleged instance of this as recently as the Bermondsey election

(8). Disturbing a Public Meeting (Illegal Practice).

The Public Meeting Act, passed in the closing days of the session of 1908, creates a new illegal practice. The operative clause runs as follows:

"Any person who at a lawful public meeting acts in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was called together shall be guilty of an offence, and if the offence is committed at a meeting during the progress of and in connection with a Parliamentary election, he shall be guilty of an illegal practice within the meaning of the Corrupt and Illegal Practices (Prevention) Act, 1883, and in any other case shall on summary conviction be liable to a fine not exceeding £5, or to imprisonment not exceeding one month."

The whole of these provisions turn upon the exact meaning which will be attached to the word "disorderly." Doubtless there will soon be decisions to guide the inquirer. So far very little use has been made of this Act.

The offences so far defined and discussed exhaust the list of acts which are illegal practices in any person, whether candidate or election agent or not. *The remaining offences are illegal practices only if committed by the candidate or the election agent.* The difference is important. An illegal practice, committed by or with the knowledge and consent of any candidate, renders him incapable (unless he obtain "relief") for *seven* years of being elected to, or of sitting in,

the House of Commons for the particular county or borough in respect of which the offence was committed. If elected, his election is void. In other persons the offences which we are now about to examine only amount to illegal payment, employment, or hiring, as the case may be. The punishment is a fine not exceeding £100, and a *five* years' incapacity for voting, or being registered as an elector. Only two of these offences will require any lengthened consideration.

(9). Banners, Music, Marks of Distinction (Illegal Payments).

Section 13 of 46 and 47 Vict., c. 51, enacts that a person who knowingly provides money for purposes contrary to the Act shall be guilty of an illegal payment. Section 16 goes on to provide that no payment or contract for payment shall be made, for the purpose of promoting or procuring the election of any candidate, on account of bands of music, torches, flags, banners, cockades, ribbons, or other marks of distinction. But what is a banner? In an 1895 election there were large bills (about 30 by 20) with the portrait of the candidate. These were exhibited in the windows and on the walls of the houses of his supporters, but as the wind and rain proved destructive some of them were mounted on canvas, with a lath at top and bottom, and in that form were hung, or nailed, in various positions. On a petition these were held to be banners. So highly technical is the law that although the candidate was not charged, in the petition, with providing banners, but only with providing the laths at top and bottom, the charge was fatal. There was a suggestion that the bills, weighted with the laths, had been carried in processions or slung on lines across the streets, to the knowledge of the candidate, and possibly this influenced the decision. "If," said Baron Pollock, "these linen portraits were given out in large quantities to enthusiastic supporters . . . any reasonable person would know that some of them would almost certainly be used as banners." You notice, therefore, that even if you do not intend the articles to be used in an illegal manner, still, if they are reasonably capable of being so used, and you supply them, you may be within the Act.

I should strongly advise you against the use of the picture postcard or any of approximately similar size, with a portrait of the candidate. You may not intend it as a mark of distinction, but if it is challenged and the Court holds it to be one, you may provide a second edition of the Walsall judgment. In that case a small card, with a portrait of the candidate and the words, "Play up, Swifts" was employed as a hat card and was held to be a mark of distinction. Relief was refused and the seat was lost. It is perhaps a question whether portraits of candidates with the exhortation to "Vote for ——," and provided with a string for hanging them up, which are scattered abroad at every election are not "marks of distinction," though many millions of such cards have been printed, distributed, and displayed during the last two or three general elections, and at innumerable by-elections, so far without legal challenge.

No similar difficulties of interpretation arise in regard to the bands of music, torches, cockades, or ribbons. These are commonly

employed at elections, and as their provision is in itself no offence, it is in election practice only necessary to take care that neither the candidate nor his election agent makes any payment, or any contract for payment, in respect of their supply. These prohibitions will only cause you trouble where you have provided some part of the election equipment in such a way as to be naturally capable of employment in defiance of these sections. The hat cards which brought disaster at Walsall *were* "naturally capable of abuse," and avoided the election. But the cutting of the candidate's name and portrait from the front page of the election address, where it is quite properly displayed, ought not to penalise him, unless he personally suggested and approved it. The distinction here suggested was that actually drawn by the late Mr. Justice Hawkins in Pontefract. The learned judge took the view that the mere use of a card as a "mark of distinction" did not necessarily make the provision of a card an infringement of the Act, unless, as at Walsall, the cards were ordered, used, and paid for with the full knowledge of the electorally improper purpose for which they were designed, or for which, at least, they might be employed. Incidentally, let me caution you not to accept the offers of large firms to supply "rosettes" by the thousand at a cheap rate. These "rosettes" are undoubtedly a "mark of distinction."

(10) Bills Without Printer's Name (Illegal Practice).

The printing, publishing, or posting of any bill having reference to the election, without the name and address of the printer and publisher on the face thereof, is an illegal practice in candidate or agent (46 and 47 Vict., c. 51, s. 18). No election has ever been avoided for non-compliance with these provisions. Doubtless a case of deliberate omission of the printer's and publisher's names from a virulent leaflet issued by a candidate or his election agent will have serious consequences for the offenders when it occurs; but so far all the cases under the Act have had their origin in *bona fide* inadvertence. Relief, under those circumstances, is granted as a matter of course. A prudent election agent, who is aware that the expression "bill" in the Act is very wide and vague, will have the name of the printer and publisher even on his noteheads. I have shown you a pretty card issued at the last election in technical breach of this section. Relief was applied for and obtained.

(11) Procuring Withdrawal of Candidate (Illegal Payment).

The payment, or promise of payment, of money to induce or procure the withdrawal of any person from being a candidate is, if done "corruptly," an illegal payment (46 and 47 Vict., c. 51, s. 15). No case under these provisions has ever arisen, so that it is impossible to say with any authoritative precision what meaning attaches to the word "corruptly."

(12) Employment in Excess of Permitted Number (Illegal Employment).

The question of paid employment at elections has already engaged

our attention and need not be further discussed. The same remark applies to the two following offences: Lending or Employing Carriages or Horses (Illegal Hiring); Committee Rooms on Licensed Premises (Illegal Hiring).

In closing our consideration of the corrupt and illegal practices, let me give you two final hints. In the first place, let me say that it is quite useless for us to shut our eyes to the fact that efforts are constantly made to entrap the candidate or election agent into the commission of some illegal act. An agent once showed me about fifty or sixty letters which had reached his candidate from various parts of the constituency about ten days before the election, all of them telling a piteous tale of distress in some form or other, and begging for a few shillings by way of assistance. Inquiry showed these letters to form, in the aggregate, what is called a "put-up job," destined to support a charge of bribery. In another case there came a letter from a voter who had left the constituency and now lived at a considerable distance, expressing his enthusiasm for the candidate whose agent had received the letter, and stating that only the lack of the fare would prevent his coming to vote. If a 10s. postal order were slipped into an envelope and posted to him nobody but himself would know about it, and his vote would be secured. Inquiry showed that arrangements had been made for a couple of witnesses to be present when the expected reply with the 10s. arrived, so that there should be a clear case against the agent for paying for the conveyance of an elector to the poll. In a third case, after the lapse of the fourteen days after the declaration of the poll, during which all claims must be sent to the election agent, there came a letter from the secretary of a local institution asking for 3s. 6d. This money was undoubtedly due as payment for a slight use which had been made of a room at the institution during the contest, and the money would have been paid if the application had been made within the statutory interval. As it was not, the agent had overlooked it. But the applicant, in asking for it, added that he knew the application was out of date, though, as the institution was a needy one, he hoped the money might be sent to him privately, and its source would not be disclosed. In that case also it was a plot to entrap the election agent into a technical offence which, if committed, might have been fatal to his candidate.

My other hint is this: When you are confronted with some unexpected election problem, the first thing is to look up your law in Rogers or Ward or Fraser. If you can find a specific provision, or a parallel case, you have the means of a prompt and accurate judgment, always bearing in mind that the judicial discretion, where it is called into play, will not always be employed in the same way, even under circumstances which appear to be *prima facie* identical. The court will grant or refuse relief largely in accordance with the spirit in which the work has been done. There is a singularly happy and lucid passage in the judgment of Mr Justice Grove (Boston, 1874, 2 O'M. and H., 164-165), where he says: "It is as

well that the public should know that when a judge pronounces an opinion upon a certain state of facts he takes into consideration the existing state of knowledge, and the existing circumstances; but when upon a second occasion persons seek to avail themselves of that ruling, and think they can do a wrong act, simply trying to keep within the particular facts which upon the former occasion were held not to be corrupt, they frequently do acts which must be held to be corrupt. It may be that, upon precisely the same apparent state of facts, an act which is not held corrupt at one time may be held corrupt at another time: because knowledge goes on, and if the second act is a mode of effecting a corrupt purpose, merely getting out of a judicial decision upon the previous state of circumstances, then that which in the first instance is not corrupt would in the second instance become corrupt. It is well that persons should know that these matters must depend upon the circumstances, and that people cannot successfully evade the law by simply, as they think, getting out of the terms which the judges use in their explanation of the law." Let me give you an instance: A and Z, rival election agents, have both slightly exceeded their maximum. A has made all his payments by cheque, and produces his pass-book, cheque-book, and the used cheques. He will almost certainly get relief. Z had no election bank account and kept no cash book, but only rough memoranda, which he says he has destroyed. On several occasions during the election he drew large sums in gold from his private account. He will probably be refused relief, because of his apparent lack of straightforwardness and candour. He may have been quite honest. He may be only an unmethodical man. But appearances are against him, and the judges will certainly be influenced against him by his carelessness. If, on the other hand, you cannot find the specific point in a statute or a decision, or in the opinions of one of the learned editors of your book, the best thing is to act in the manner which, in your judgment, would best command itself to the approval of an election court. What the court wants is honesty, straightforwardness, a compliance with the spirit of the Acts, and an absence of endeavour to deceive or to mislead so as to obtain an improper advantage. If your work exhibits those characteristics, you will go before an election court with the maximum of advantage; and, on the other hand, your opponents, in scrutinising your work for the purpose of discovering a foundation for charges against you, will have the minimum of opportunity for successful formulation.

The function which we call the "nomination" is technically the election. It is, however, only completed, as the election, when there are no more candidates than vacancies. This is rare in our strenuous political life, so that in the majority of cases the election has to be adjourned in order that a poll may be taken; and it is this poll which we generally call the election. The returning officer must give public notice of the day of the "nomination." He must fix two hours—between ten and three—during which he will attend to receive nominations, and his attendance must continue for one

hour after the end of the original two hours. He must, during the few days intervening between notice of the nomination and the actual nomination itself, supply any registered elector with a form of nomination paper. The form provides for the nomination by two registered electors and for the signatures of eight others, who must assent to the nomination. These signatures must be checked with the most scrupulous care, so as to ascertain that the names are those of registered electors and that the signatures correspond in every respect with the names as they appear in the register. For instance, if one of your signatures is that of John Brown and he appears on the register as William Brown your paper will probably be declared invalid. Even after the most exhaustive checking it is desirable not to rely on one paper but to have others in reserve. The returning officer himself will check the nomination paper, which he proposes to accept, and it is the usual thing for the agents to agree that, as far as they are concerned, they will take no technical objections to each other's papers. The best plan is for the papers to be handed in by the candidate or agent, who should attend early in case of some unforeseen complication. As soon as the returning officer has accepted a nomination he placards the particulars of it outside the building where the nomination takes place, and the process is then complete; but the candidate or agent will be well advised to wait until the expiration of the three hours, or to be within instant call, in case of an attempt to raise a technical objection. Where objections are raised the returning officer's decision is final if he disallows them. If he allows them an appeal lies on petition. If after the lapse of one hour from the close of the two hours appointed for the nomination there are no more nominations than vacancies, the persons nominated are declared elected. This is an unopposed return, which, judging from current appearances, is likely to be a rather rare phenomenon at the pending election.

The returning officer will give the election agent notice of the amount which he requires to be paid as security for his charges at the nomination. This amount (which is fixed within a certain very handsome maximum by the Parliamentary Elections (Returning Officers) Act of 1875) forms no part of the statutory amount of election expenses. If you propose to pay it in bank notes you need do no more than have them with you and put them down with the nomination paper which you present. But if you desire to pay by cheque or to give security, it will be desirable to ascertain that the returning officer agrees to your proposal, since, unless the money is found or security given within the three hours, your candidate will be deemed to have withdrawn.

The date of the poll falls within certain statutory limits, dependent upon the time of the issue of the writ. Within those limits it is the custom for the returning officer to fix the date after conference with the election agents, who generally meet him for that purpose. You will be guided in your own opinion by the views of your candidate and his supporters. Personally, I have a rooted objection to a Monday poll, because it almost necessarily involves the

working of the staff on Sunday. In country constituencies a Saturday poll is open to the objection that the votes cannot be counted till Monday. If there should happen to be no election agents' conference with the returning officer on this subject, you are perfectly justified in writing to him on the subject and urging your own views, with due respect to his position.

There are a few administrative provisions with regard to the polling mechanism with which I need not deal in detail. These relate to the provision of the polling stations themselves and to the public notice of their position and the description of the voters who are allocated to them; the provision of secret compartments in the stations, as well as of ballot papers and ballot boxes, the appointment of the polling station staffs, and the maintenance of order in the polling station. The polling stations should open and close with absolute punctuality. At the close there will probably be some persons inside the polling station who have not actually recorded their votes when the clock strikes. The practice is for these persons to be permitted to vote, but, of course, to prevent any others from entering the station after eight p.m. In Worcester, 1880, it was held that the door of the polling station might be closed before the time if there were sufficient voters within the station to occupy the presiding officer till closing time. With all respect, I doubt very much if that is now good law and I should certainly not advise any presiding officer to act upon it.

The various presiding officers, who are in supreme control (subject to the general authority of the returning officer), must act with absolute impartiality. When we come to consider the counting of the votes, I will give you a rather striking instance of the infringement of this rule by a presiding officer. At the opening of the poll the presiding officer is required to show the ballot box quite empty to the persons (i.e., his own staff and the personation agents who are then in the polling station), and then to lock and seal it and to place it in a position where it can be under his continuous observation. As long as polling proceeds slowly, or at polling stations to which only a small number of voters are allocated, the presiding officer may well give out the ballot papers himself; but, in a busy station and during the "rushes" which take place in the dinner hour and from six to eight in the evening, it is better that he depute the actual giving out of ballot papers to his clerks and content himself with supervision, and particularly with the close observation of the ballot box and of the official mark on each paper before it is placed in the box.

This "official mark" is a matter of great importance. Let me explain what it is. Clearly, an expert printer, by polling early and making a mental note of the type in which the ballot papers were printed, would be in a position to run off a number of forgeries which might be introduced into the ballot boxes by other voters later in the day. It is to prevent the introduction of forged ballot papers that the official mark is put upon each paper at the time of issue to the voter. The mark is now generally produced by

perforation so as to appear on the front and back of the paper, though its absence from the *front* will not invalidate the paper. Its precise nature is the returning officer's secret. Sometimes it is a purely arbitrary design, and sometimes a combination of letters—"J. W. C." and "A. R. X.," for instance, are official marks that occur to me. When a given official mark has been used in a constituency the same mark may not again be used for seven years. There are now perforating machines which admit of being changed so as to produce a multiplicity of designs in order to meet the necessities of this provision.

I think we are now in a position to pass in critical survey the whole of the official personalities and the mechanism which they manage. First of all, there is the returning officer, who is the person in supreme control of the proceedings. He appoints deputies, who must be of full age and who are, under himself, in supreme control at the polling stations. They are called presiding officers. The returning officer himself may, if he thinks proper, be the presiding officer at one of the polling stations. To assist the presiding officer, there will be a certain number of clerks at each station. Next, there will be the polling agents, better known as personation agents, appointed by each candidate, to attend the poll for the purpose of detecting attempts at personation. Finally, there are the voters themselves who come in to vote. With the single exception of one class of persons, every voter must vote at the polling station to which he is allotted and at no other. The excepted class is the police. A constable who is a voter may, perhaps, be employed on the election day at such a distance from his own polling station that it would be impossible for him to vote there. Under the Police Disabilities Removal Act, 1887, any constable who is likely in that way to be incapacitated from voting is entitled, within the seven days previous to the poll, to receive a certificate from the chief constable, the production of which to the presiding officer will entitle him to vote at *any* polling station in the constituency. It is desirable that the election agent, if he expects his candidate to receive the police vote, should courteously call the attention of the chief constable to these provisions and ask that they may be brought to the notice of the local police force in order that no votes may be lost. A chief constable will always do this.

Perhaps the best way of making clear the duties of these various elements of the polling station staff will be to suppose the entrance of a few applicants for ballot papers and to note the procedure in the case of each. This mode of observation will also enable us to get a clear idea of the nature of personation, which I promised to discuss in some detail. The first instance is the normal case. A voter enters and applies for a ballot paper. The returning officer inquires name and address. "Richard Roe, 115, High Street." The presiding officer turns to his register, finds Richard Roe at that address, his registered number being 5816. He notes that there is no objection to the voter on the part of the personation agents. He then tears a ballot paper from his book, marking on the counterfoil

the number 5816, so that in case of a scrutiny it can be discovered what ballot paper was issued to Richard Roe. The voter retires to a compartment, marks his paper, folds it, shows it, with the official mark, but not the "X," visible, to the presiding officer, puts it in the box, and leaves the station. The next applicant for the ballot paper gives the name of William John Roberts, of 20, North Street. Reference to the register by the presiding officer shows that the registered voter is William *James* Roberts. "That's a mistake," says the applicant. "I am the only Roberts at that address." It may be that the mistake will already have been noted by the registration agents and that the personation agents have a note of it in their marked registers, or it may be that Roberts is a well-known local man, so that the presiding officer sees at once that there is merely a mistake in the name, and, consequently, issues the ballot paper. But if Roberts is not well known, one of the personation agents may request the presiding officer to put the question, which he *must* then do. In the present case, if it is a borough election, the question (which must be put in the very words of the statute, 6 and 7 Vict., c. 18., s. 81 (a), and in no other words) will be: "Are you the same person whose name appears as William James Roberts on the register of voters now in force for the borough of Shrewsbury?" The voter says he is. If the personation agent still remains unsatisfied he may request the presiding officer to administer the oath. In that case the words will be these:

"You do swear (or affirm, as the case may be) that you are the same person whose name appears as William James Roberts on the register of voters for the borough of Shrewsbury?"

You will note the form of the question and the oath. The voter is not asked if he is William James Roberts. He is asked if he is the same *person* whose name appears *as* "William James Roberts," so that if he unquestionably is the Roberts whom the register intends to designate he can safely give the affirmative reply or take the oath. If not, he will be guilty at least of a misdemeanour and, probably, of the full offence of personation, which is a felony. Let us take two or three other imaginary cases in further illustration of the law and practice as to personation. The first is that of an applicant who gives the name of Philip Robinson and his address. A ballot paper is about to be issued when one of the personation agents asks that the oath be administered. His marked register shows that Philip Robinson is dead and he knows that the registration agent would not have so marked it if there were the slightest doubt about the fact. The so-called Philip Robinson declines to take the oath and makes for the door. But the personation agent informs the returning officer that he verily believes and undertakes to prove that the person who has attempted to vote is not the person whose name appears in the register. On that information the presiding officer *must* give the alleged offender into custody. His verbal orders to a constable are sufficient warrant for the constable's action.

In this connection I need hardly impress upon those of you who will be responsible for the preparation of the personation agent's

registers, or who will act as personation agents, the absolute necessity of being quite certain about the facts before you take any steps which may end in an arrest for personation. The news of an unjustifiable arrest would do irretrievable injury to the side in whose interest it was effected unless, indeed, it took place so late in the day that it could not become generally known before the poll closed. Moreover, damages (not less than £5 nor more than £10) may have to be paid to a person so charged with personation without reasonable and probable cause. These damages may be assessed (within the statutory limits) by the justices before whom the case comes, and the consent of the injured party to accept the money operates as a bar to all further proceedings.

I want you to notice particularly that in the instance we have just discussed the person attempting to vote is alleged not to be the real voter. He has, therefore no valid claim to receive a ballot paper, and his offence is complete at the moment when he has applied, in spite of the fact that his attempt was at once detected. In the next case we will discuss a personation where there is a valid claim to a ballot paper. Charles Dickens applies for a ballot paper. "You have already voted," says the presiding officer. Mr. Dickens insists that he has *not* voted. He has travelled some distance, and has only just arrived. He could not possibly have voted, he says. The presiding officer's marked register, however, is decisive on the point that a ballot paper has been applied for in the name of Charles Dickens and given out. What has happened then becomes clear. Somebody was aware that Mr. Dickens lived at a distance and was not well known in the constituency. Therefore this ingenious partisan decided to personate him. As Mr. Dickens's identity is established he has a clear claim to receive a ballot paper. His position differs from that which we have just considered, because he *is* the person whom he claims to be, while the other man was not; and yet, if the presiding officer issues a ballot paper to him, we shall have two ballot papers issued to one name on the register, which is out of the question. Under these circumstances the presiding officer will have recourse to a small stock of pink ballot papers, from which he will take a paper for Mr. Dickens, making a note of the facts of the case. This paper, however, Mr. Dickens will not put in the ballot box, but will return to the presiding officer. It will not be included in the counted votes, but if there is a scrutiny the earlier personated vote will be cancelled and the genuine vote on the pink paper will be admitted. Such a vote is called a "tendered vote." It may happen, of course, that the personated vote will be found to have been recorded for the same candidate as its genuine counterpart, in which case the process of adjustment will make no difference to the aggregate. I remember some extraordinary instances of this kind of accidental personation, and your own experience will, in course of time, supply you with many curious cases.

One other class of personation requires some brief consideration. As the law stands at present a voter may possess qualifications in many different constituencies. Thus he may have county votes in

Northumberland and Cheshire, and borough votes for King's Lynn and Wolverhampton. All these he may exercise if he choose. But if he has votes in more than one division in the county of Cheshire or of the borough of Wolverhampton, he may only exercise one such vote at one election. Thus a voter who is on the register for Stepney (which is a division of the old borough of the Tower Hamlets) may vote there at the General Election if he choose: but may not also vote, at the same election, in St. George's and Mile End, even if he be on the register for qualifications in those divisions. If he does he is guilty of personation as soon as he applies for the second ballot paper. As a rule the voter is called upon to decide for which qualification he will vote, and the other or others are "starred," to indicate that the voter may not vote on those qualifications. But cases of duplex and triplex qualifications constantly elude observation till they are discovered in the course of preparation for the poll, so that it becomes necessary to provide against the record of second and third votes by putting the question to the voter. Thus, Peter Robinson is found to be on the register both for the Harrow and the Enfield divisions of Middlesex. The Enfield election takes place first, and you are agent in the Harrow division. You will instruct your personation agent, if Peter Robinson presents himself to vote, to ask the presiding officer to put the question, "Have you already voted at this election for any other division of the county of Middlesex?" If Robinson admits that he has, he will be refused a ballot paper. If he declares that he has not, he must have a paper; but if his declaration be false, he is guilty of personation. Strictly speaking, an election agent and his personation agents are supposed to search for personators without regard to partisan considerations. But in practice it is the custom to divide the duties, so that each agent devotes himself to the exposure of personations which would be disadvantageous to his own candidate.

At the close of the poll the personation agent should bring his marked register away with him. It is necessary that the election agent have it, in case it should be desirable to make immediate inquiry into any cases of personation. Instances occur where the presiding officer attempts to take possession of these registers, and to prevent the personation agents from conveying them to the election agents. The personation agent should be instructed to firmly but courteously inform the presiding officer, under these circumstances, that he declines to give up the marked register to anybody but the election agent. In case of threatened trouble, the returning officer may always be relied upon to restrain the undue zeal of the presiding officer in this matter.

Before the day of the poll it will be necessary for you to decide upon your list of scrutineers to attend the counting of the votes. The returning officer will give notice to the election agent of the time and place where he intends to count the votes. At the same time he will tell you how many scrutineers he proposes to admit on behalf of each candidate, and he will probably remind you that

each of these scrutineers, before he can be admitted to the counting room, must have made a declaration of secrecy before a justice of the peace. The candidate and the election agent are entitled to be present as a matter of right; the rest by favour of the returning officer. As a rule, you will select a few of the most active and influential supporters of your candidate to attend him at the final scene. The chairman of the former association (dissolved on the eve of the contest) will doubtless be one, the chief registration agent another. They ought to be wide-awake people, for the result, in a close fight, may conceivably depend upon their seeing that all doubtful ballots are weeded out. They should be people with steady heads, who will not allow their feelings, whether of gratification or dissatisfaction, to disturb the orderly procedure of the counting room, where the returning officer is absolute master of the situation. It is better to keep your candidate's wife out of this function unless you are absolutely certain of her steady nerve and power of self-control.

Taken altogether, in fact, this function is the most trying of all, unless it is the delivery of judgment on an election petition. The procedure has local variations, but in the main it always takes this form. The sealed ballot boxes stand in full view on a table. Around that table are other tables, forming an enclosed space. Inside this are the returning officer and the official counters, who actually handle and count the ballot papers. Outside it, on the other side of the tables, are the candidates, their agents, and their scrutineers, who simply observe and supervise the counting but do not touch the ballot papers. When all is ready for the count to begin, the seals of some boxes are cut and the papers tumbled out on the tables, the boxes being exhibited empty to the scrutineers. It is usual at this stage to check the papers by simply counting their number so as to ascertain that all the issued papers are there. Thus, if the returning officer reports that he issued 390 papers, there should be 390 in the box. If there are one or two less, the fact is probably a result of the action of that class of voter who takes his ballot paper away as a souvenir of the proceedings and yet remains under the impression that he voted. If there are more papers in the box than the presiding officer issued, there may be (as, in fact, there were at a fairly recent election) forged ballot papers. But that is not a very likely contingency and we need not pause to consider it.

Several boxes will no doubt be in process of checking at the same time. As soon as the checking is complete, the papers will be mixed in accordance with the statute and the actual sorting will then be commenced. While the checking is going on, however, the election agent and his scrutineers will have an opportunity of forming a general opinion whether the voting at the various stations, as shown by the ballot papers, tallies with their ideas of the party strength or weakness in the respective districts. You have here an infallible test, infinitely superior to the most careful and elaborate canvass in the world. The truth comes out at last, sometimes as a rather unwelcome revelation that what you imagined to be one of your strongholds is really dead against you. Sometimes the revelation is quite the other way. At a certain polling station I was once told by a

locally eminent authority that there would not be twenty voters for a certain candidate. In the result there were at least 200. You have a perfect right to obtain this information as to the political colouring of the various wards or districts. If the opportunity comes do not neglect to take it.

The exact process adopted in the count will depend upon the conditions of the contest. If there are only two candidates for a single seat, the counting is simply a sorting of the respective votes into separate heaps. If you have five candidates for two seats there will be many varieties of cross voting, and in such instances there is sometimes no attempt to sort the ballots, but the votes are credited on counting sheets. Whatever the process, it is the business of your scrutineers to watch it closely, so that there is no miscredit or mis-sorting and so that doubtful votes are put aside for adjudication by the returning officer. In a very close fight the result may depend upon this vigilance, and if you subsequently have reason to believe that the declared figures were wrong you can only have a recount by lodging a petition and depositing £1,000. As the sorting proceeds, it is usual for the respective papers to be counted in bundles of fifty or a hundred. These bundles are in turn arranged in separate piles. It is very desirable that the election agents should personally check the bundles. There have been cases where, by inadvertence (and rarely, perhaps, by design) three or four votes for Smith have been at the top of the bundle while all the rest of its contents were ballots for Jones. To guard against that eventuality, an election agent should request permission for himself and the other agents to go inside the ring and personally check the bundles.

Before the result is declared the returning officer will adjudicate upon the disputed ballot papers. This adjudication, again, may affect the result, and hence the election agents should watch it closely and if necessary make notes of cases where they are dissatisfied with the returning officer's decisions. Precisely similar defects on ballots for opposing candidates can generally be settled by pairing.

In other cases it is necessary to possess some knowledge of the facts and principles upon which the validity of ballot papers depends. I will state the principles, and I will then show you a number of reproductions of disputed ballot papers, to which those principles have been applied either by the judges on election petitions, or by the election petitions officer, or by returning officers. These principles are:

(1) The paper must bear the official mark, at least on the back.

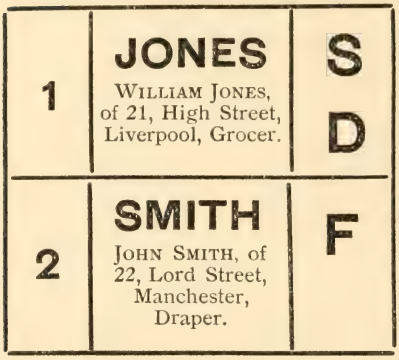
(2) The intention of the voter must be clearly indicated. If it is doubtful (or not indicated at all) the ballot paper is void.

(3) Any writing by which the voter *can* be identified will invalidate the vote, though that is not the case if the writing is only of such a character that he *might* be identified. Thus the voter writes "Philip Roberts" on his ballot paper and there is a Philip Roberts on the roll of voters. The vote is void. But if Smith be a candidate, and the voter makes his X and under it writes the word Smith

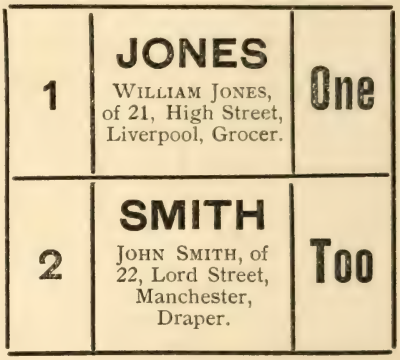
that vote is good. The voter *might* be identified by his writing, but you cannot put it higher and say positively that he can be.

(4) Voting for more candidates than the voter is entitled to do is generally cited as a source of invalidity. It is, however, only a special case of uncertainty.

I have here a number of enlarged reproductions of disputed ballot papers, some taken from the leading legal text books on Election Law, and some collected from my own experience. All of them have been adjudicated upon either by the judges, or by the returning officer, or by the "prescribed officer" who presides with a recount taken in pursuance of the prayer of an election petition.

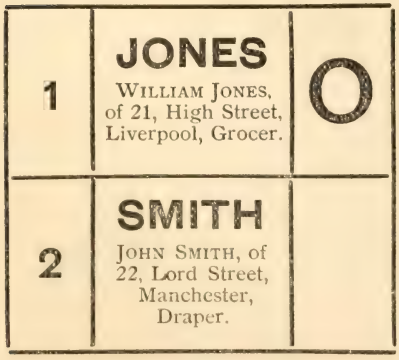


(Rejected.)

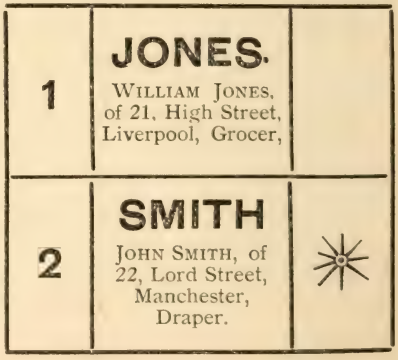


(Rejected.)

The above are two "freak" ballot papers, both of them obviously invalid. "S D F," I suppose, stands for Social Democratic Federation. These two curiosities—both of them actual cases from London ballot boxes—may remind you that even in these days of high political intelligence the voter does extraordinary and apparently quite futile things.



(Rejected.)



(Valid.)

These last two (page 42) are papers which represent the activity of the voter who will not put his "X," but prefers to put something else. The paper with the "O" was rejected by the judges as invalid. The other, with the star, was admitted, the mark being, so to speak, only an embroidered edition of the statutory "X." In contrast to this rejected ballot with the "O," however, take this valid paper, which has only a single stroke:

1	**JONES** WILLIAM JONES, of 21, High Street, Liverpool, Grocer.	/
2	**SMITH** JOHN SMITH, of 22, Lord Street, Manchester, Draper.	

(VALID.)

We may now take a few illustrative cases of ballots which bear written characters in addition to, or in place of, the "X." Here are two instances:

1	**JONES** WILLIAM JONES, of 21, High Street, Liverpool, Grocer.	
2	**SMITH** JOHN SMITH, of 22, Lord Street, Manchester, Draper.	X L. W.

(REJECTED.)

1	**JONES** WILLIAM JONES, of 21, High Street, Liverpool, Grocer.	X R
2	**SMITH** JOHN SMITH, of 22, Lord Street, Manchester, Draper.	

(VALID.)

These papers give good instances of the rule that the vote is bad if the voter *can* be identified, but not if he *might* be. The full initials, L.W. (and much more, of course, the full signature, which is sometimes written), afford a means by which the voter can, with a fair amount of certainty, be discovered. But the simple "R" may be the initial of the Christian name or the surname, and identification would be an absolute impossibility. There is, however, one apparent

exception, even to this rule, which, perhaps, we can best illustrate by another group of ballot papers:

1	**JONES** William Jones, of 21, High Street, Liverpool, Grocer.	
2	**SMITH** John Smith, of 22, Lord Street, Manchester, Draper.	Smith

(Rejected.)

1	**JONES** William Jones, of 21, High Street, Liverpool, Grocer.	= Jones
2	**SMITH** John Smith, of 22, Lord Street, Manchester, Draper.	

(Rejected.)

1	**JONES** William Jones, of 21, High Street, Liverpool, Grocer.	Jones X X
2	**SMITH** John Smith, of 22, Lord Street, Manchester, Draper.	

(Valid.)

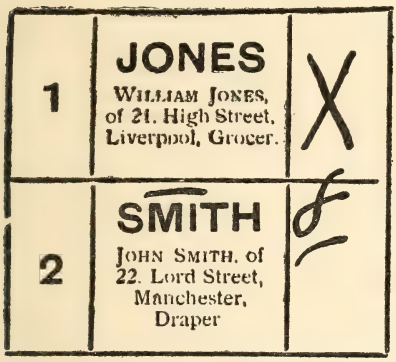
The rejections here are based (*a*) upon the absence of the "X," which the Second Schedule of the Ballot Act directs shall be used in the marking of the paper, and (*b*) upon the writing, as affording a means of the identification of the voter. But you will notice that in the third case, where there is a very complete compliance with the Act as regards the "X," the other objection is not fatal. There was, however, a hint in the Wigtown case that the use of a peculiar ink, or pencil of unusual colour, to mark the paper, might void the vote, if the voter were well known as a user of that kind of ink or pencil. But merely accidental marks on the ballot paper will not invalidate it.

1	**JONES** William Jones, of 21, High Street, Liverpool, Grocer.	
2	**SMITH** John Smith, of 22, Lord Street, Manchester, Draper.	X ●

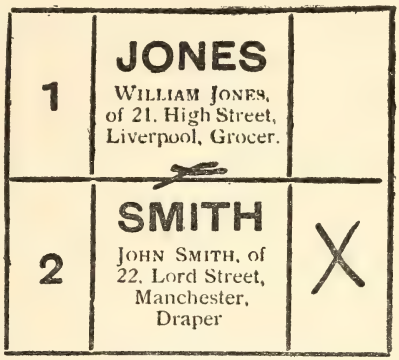
(Valid.)

In this case the round smudge mark was apparently made with

the thumb. Even where the "X" was opposite one candidate's name and the smudge opposite the name of the other, the vote was held good. The same principle applies where the superfluous marks are even more definite, provided they do not amount to a distinct attempt to vote for more candidates than a voter is entitled to do. Thus:

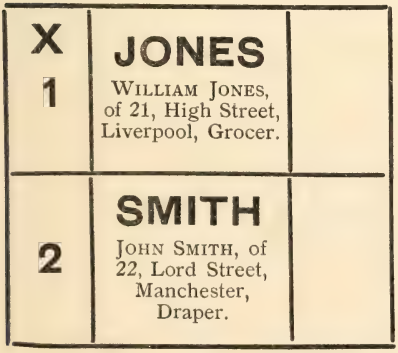


(Valid for Jones.)

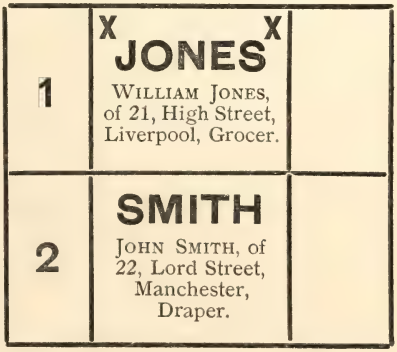


(Valid for Smith.)

In the left-hand specimen there is a distinct "X" for Jones, and the various marks in Smith's space, whatever else they may be, are not "X." So, again, in the right-hand specimen, there is a distinct "X" for Smith, and the other mark, though it looks like "X," is not in the proper place. If it had been, the vote would probably have been rejected. This last instance is taken from the Cirencester scrutiny and has been judicially decided; but I confess that in a similar case, with only a ballot paper like this between my candidate and disaster, I should feel the reverse of comfortable. I shall show you an even more delicate instance at a later stage. On the other hand, the mere misplacing of a single "X" will not invalidate the vote. Thus:



(Valid.)



(Valid.)

1	**JONES** WILLIAM JONES, of 21, High Street, Liverpool, Geocer.	
X 2 X	**SMITH** JOHN SMITH, of 22, Lord Street, Manchester, Draper.	X

(VALID.)

Here you have the "X" (or two or even three of them) unmistakably allotted to the candidate who is the voter's choice, so that these cases present no difficulty. But if the vote, though near the space belonging to a given candidate, is not within it, the vote is bad. Thus:

X

1	**JONES** WILLIAM JONES, of 21, High Street, Liverpool, Grocer.	
2	**SMITH** JOHN SMITH, of 22, Lord Street, Manchester, Draper.	

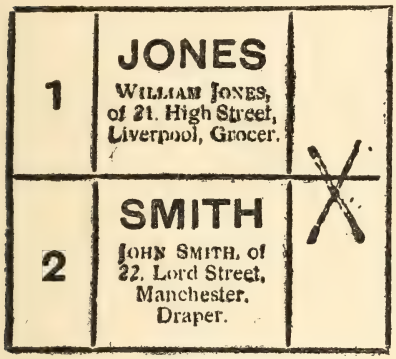
(REJECTED.)

But if there is a "X" in the proper place, the mere fact that there is another "X" outside the space will not cause the rejection of the vote:

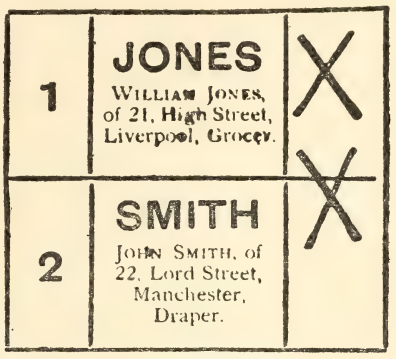
1	**JONES** WILLIAM JONES, of 21, High Street, Liverpool, Grocer.		
2	**SMITH** JOHN SMITH, of 22, Lord Street, Manchester, Draper.	X	X

(VALID.)

The most crucial of these questions arises when the "X" extends from the space allotted to one candidate into that allotted to the other. Thus:



(VALID FOR SMITH.)



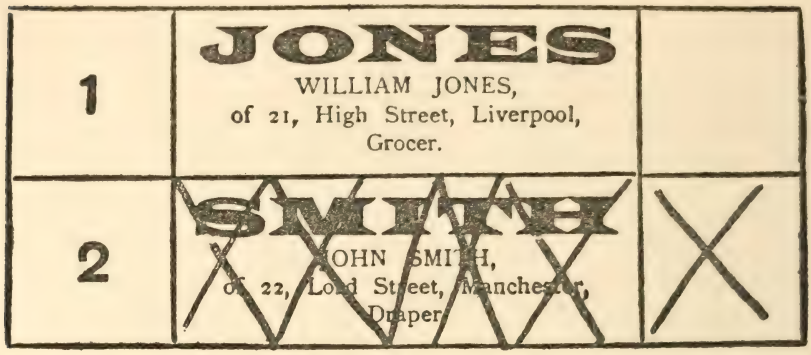
(VALID FOR JONES.)

The rule is that the vote is good for that candidate in whose space the intersection of the two lines of the "X" occurs. In the left-hand paper above the intersection is in Smith's space, so that the vote is added to his total. The right-hand instance represents the judicial decision in the Cirencester scrutiny. It certainly seems to me, however, with great respect, that this is a case where the vote might well have been held void for uncertainty, on the ground that the voter seemed to have desired to vote for both candidates. The single "X" opposite Jones's name, if it stood alone, would undoubtedly be a good vote for him. The single "X" opposite Smith's name would also be quite good if it stood alone, for the intersection on two lines of the "X" is in his space. You will find that the learned editor of Rogers has his doubts about this paper, too.

Last of all, I will show you a couple of ballots of quite abnormal type. The first displays a case where the voter not only exhibits in the proper way his preference for Jones, but also evinces his dislike for Smith:

(VALID FOR JONES.)

This paper might well be said to show a double indication of a single and very definite intention. But what shall we say of this?



(Valid for Smith.)

This paper was judicially held a good vote for Smith, on the ground that there was a distinct "X" marked opposite Smith's name. But it is, of course, arguable that what the voter wished to do was to obliterate Smith's name from the ballot paper and to leave Jones in clear possession of the field.

I mentioned a case of "tinkering" with the official mark. In that case the presiding officer at a station for 400 voters was a strong opponent of candidate A. A very close fight was expected. About 330 electors voted, of whom twelve were found to have wasted their time owing to the absence of the official mark from the ballot-paper. Such a percentage of spoilt papers was itself a proof of the grossest negligence by the presiding officer; but when it appeared that the whole of the twelve papers were in favour of candidate A, it became evident that not negligence, but another influence altogether, had been at work. What had happened was that the presiding officer, employing his local knowledge of the persons who were likely to vote for candidate A, had invalidated their votes (and attempted to influence the result of the election) by deliberately omitting the official mark from their ballot papers. On a very close poll his device would have changed the political complexion of the constituency and would naturally and inevitably have led to his own prosecution.

If the votes of two candidates are equal (I believe the equality of three candidates has never yet occurred in our election experience) the returning officer may give a casting vote if he is a registered elector of the constituency. Otherwise a returning officer may not vote. If he declines to give a casting vote, or has not one to give, he must return the names of both candidates by endorsing the double return on the writ. It is then for the candidates to claim the seat by petition—that is to say, by means of a scrutiny. It seems that in the meanwhile both members may claim to be sworn and to take their seats, but neither can vote.

When the final result has been arrived at it will be declared in the usual way, and you will proceed to wind up the whole affair, so far as your candidate is concerned, by making up your return of election expenses. All persons who have any claims upon you as an election agent must send them in within fourteen days of the day on which the declaration of the poll is made, which may be the day of the poll itself, or the day after, or even a Monday after a Saturday election. Any which do not reach you within that time are statute barred, and cannot be admitted without leave of the court. Within a further week—that is to say, within twenty-one days of the declaration—all admitted claims must be paid. Any not paid within that time must appear in your return as "unpaid" or "disputed" claims, and can only be settled by leave of the court. Within a further fourteen days (that is to say, within thirty-five days of the declaration of the poll) the return of election expenses must be sworn by you and the candidate, and transmitted to the returning officer—preferably by registered post or registered parcel, since that furnishes you with independent evidence of the fact of transmission. Only the *transmission* need take place within the thirty-five days. It is not necessary for the return to actually reach the returning officer within that period.

The best way to go to work in the compilation and completion of the return is to print a number of handbills containing a notice of the provisions of the Act with regard to the presentation of claims within fourteen days, and to post them immediately upon the declaration of the poll to all persons whom you know to have claims upon you. If any known claims have not come in within, say, ten days, you will save yourself much trouble by writing and asking for them, pointing out that if you do not get them they cannot be paid. When you have done so much, you have done all that can be expected. If any claimants do, in fact, omit to send in their claims after these reminders, you can only explain that the claim is now statute barred, but that if they like to sue you in the County Court you will appear and state the facts, and admit the debt if it be genuine. If judgment is given for the claimant, that operates as leave to pay. Meanwhile the claim will have to go in your return of election expenses as an "unpaid claim."

The returning officer will send you an account of his own charges, together with a cheque for the balance (if any) which remains out of the amount you originally paid to him as security for his expenses. This account you must file with the return of your own election expenses, though, of course (as I have already told you), it forms no part of the statutory maximum within which you are restrained. A candidate or election agent may tax the returning officer's charges —that is, he may object to them before the Mayor's Court in the City of London, and before the County Court elsewhere in England. It is quite possible that he may obtain reductions, though they are hardly likely to be worth the trouble involved in getting them.

When the votes have been counted, then, and the return duly made, there still remains one power, and only one, which can review

the result, and if necessary set the election aside. That power is possessed by Parliament itself. But we have done away with the ancient system under which Parliament actually sat in judgment on the delicate questions of law and fact that arise on an election petition. The trial of election petitions at the bar of the House soon led to the establishment of what was practically a rule, that the decision should be in favour of the voters who had returned the Ministerial candidate. The Act 10 Geo. III., c. 16, therefore, transferred the trial to the hands of committees, chosen under that statute. This mode of trial, again, was ultimately found unsatisfactory. Since 1868 the duty of trying election petitions has devolved upon one, and since 1879 upon two, judges, chosen from a rota selected annually by the other judges. The judges report their findings to the House of Commons, which in that way preserves and makes manifest its own jurisdiction in the matter of its own membership. As, however, the reports of the judges are never challenged (the nearest approach to a challenge was the brief debate on one of the 1906 petitions), their determinations are, in effect, as final and as authoritative as if they were rendered in pursuance of their own proper and ordinary judicial functions. The fact that the judges sit as delegates of the House of Commons furnishes the reason why legal etiquette does not permit a member of the Bar who is also a member of the House to appear as an advocate on the trial of an election petition.

Petitions fall into four well-defined classes (petitions, recriminatory petitions, recounts, and scrutinies), and you will save yourself from a great deal of intellectual mistiness if you endeavour to comprehend quite clearly what they are: (1) There is the ordinary petition brought by A alleging that B's election was void because of certain offences which he is alleged to have committed, either personally or by his agents. (2) But A, if he was a candidate at the disputed election, may go further. He may say not only that B was not elected, but that, if the facts are examined, it will be found that he himself (A) was really elected. That is to say, he claims the seat. In that case B may reply by saying, "Even if I was not duly elected, *you* were not, for you had also committed offences against the election law." That is to say, B retaliates with a "cross-petition," or, as it is technically termed, a recriminatory petition, which will be tried after the original petition is disposed of. (3) A may desire only a recount of the votes. He may be dissatisfied with the decision of the returning officer with regard to some of the disputed ballot papers, or he may have reason to believe that a bundle of fifty votes was misplaced at the last moment. The recount will probably take place at the Election Petitions Office at the Royal Courts of Justice, and only the *prima facie* aspect of the papers will be taken into account. That is to say, the aspect of the papers as they stand is conclusive at a recount. Even if you could identify the paper which was marked by a man whom you now know to be an unnaturalised alien, you cannot object to it on that ground. If it is plainly and properly marked it will be counted. (4) But by embarking upon the fourth class of petition (the

scrutiny) you can, so to speak, get behind the ballot papers and scrutinise the qualification of the voters who marked them. In that case you will be ordered to furnish your opponent with particulars of the votes to which you intend to object, and the grounds of your objection. You will object to the vote of Johann Niersteiner on the ground that he is an alien; to that of Benjamin Jones on the ground that he was employed for payment at the election; to the vote recorded in the name of Daniel Mason on the ground that Mason was in the hospital on the day of the poll and must, therefore, have been personated. And in this last case you may go to a good deal of trouble to prove that Mason, who is a political opponent, was personated, and you may satisfy the judges that he was. But when the ballot paper is turned up it may be found that Mason was personated in the interest of your own candidate, so that you have struck a vote off your own poll. That risk is one of the terrors of a scrutiny.

If a candidate, or his supporters or advisers, should think that there is a case for a petition of any kind, they will, as far as possible, sift and consider the evidence upon which they propose to rely. If they are satisfied of its soundness they will have a petition presented. This is done by lodging the petition at the Election Petitions Office at the High Court of Justice. With it, or within three days of its presentation, a sum of £1,000 must be lodged or security given to that extent. The petitioner or petitioners must be a person or persons who voted or had a right to vote at the disputed election, or else some person who alleges that he was a candidate thereat. Generally speaking, a petition must be presented within twenty-one days of the receipt, by the Clerk of the Crown in Chancery, of the return to the writ on the strength of which the disputed election was held. But when the petition alleges a specific payment corruptly made, by the member, or on his account, or with his privity, since the date of the return, then the petition may be presented within twenty-eight days of such payment. And if the election is challenged on the ground of an illegal practice revealed by the return of the expenses (e.g., the omission of items which ought to be there) the petition must be presented within fourteen days after the receipt of the return of expenses by the returning officer. Finally, if the petition alleges a payment made by the member or his agent in pursuance of an illegal practice, then it may be presented within twenty-eight days of the payment or other act upon which it relies. It is usual, however, to present the petition within the twenty-one days which I first mentioned; and as the case will then be only in a very undeveloped stage, the petitioner will probably allege every election offence known to the law—bribery, treating, undue influence, personation, illegal practices, false statements, illegal payments, and illegal hiring. When the return of election expenses is filed (fourteen days after the twenty-one days within which the petition must be lodged), the petitioner may possibly apply for leave to amend his petition by charging expenses omitted from the return, false declaration as to election expenses, and so forth. But before the case comes to trial he will be ordered by the court to furnish to the respondent

what are called "particulars" of all these charges and to do it in a certain form—that is to say, he will have to give names and addresses, dates, and definite statements. For instance, as regards bribery, he will have to transform his vague general allegation in the petition into separate specific instances and to furnish, in each case, the name and address of the person bribed, the name and address of the person who bribed him, the amount or nature of the bribe, and the date of its payment. Failure to furnish all the ordered particulars, or to furnish them in the precise manner specified by the court, will lead to the charges all being struck out at the trial. I have seen a long array of charges vanish at one swoop because they were not in the form ordered by the court. From this point onwards the conduct of the petition ceases to be a matter of election law pure and simple, and becomes rather one of the collection of evidence. At this point, therefore, I bring my necessarily brief survey to a close.

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